

THE
High Court
OF
JUSTICE,

c #

OR
CROMWELLS New Slaughter-
House in
ENGLAND.

With the Authority that Constituted,
and Ordained it
Arrained, Convicted, and Condemned,

FOR
Usurpation, Treason, Tyranny, Theft,
and Murther,

Being the Third Part of the *History of*
INDEPENDENCY,

Written by the same Author.

LONDON,

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Plin. Paneg. ad Trajanum.

*Olim criminibus, jam legibus laboratur; & metuendum est,
ne legibus fundata Respublica, sit legibus evers.*

Isaiah 59. vers. 3, 4.

*Your hands are defiled with blood, and your fingers with in-
iquity, your lips have spoken lyes, your tongues have mu-
tered perversness. None calleth for Justice, nor any plead-
eth for truth; they trust in vanity and speak lies, they ce-
ceive Mischief, and bring forth Iniquity.*

Verse 7.

*Their feet run to evil, and they make hast to shed innocent
blood; their thoughts are thoughts of iniquity, wasting and
destruction are in their paths. The way of peace they know
not, and there is no judgement in their goings.*

Verse 11.

*We look for Judgement, but there is none; For salvation, but it
is far from us.*

Verse 14.

*Judgement is turned away backward, and Justice standeth as-
off; For truth is fallen in the streets, and Equity cannot
enter.*



That every thing is kept and maintained by the same ways and means it was got and obtained, is a rule true both in Philosophy and Policy. And therefore Dominion gotten by fraud and force, must by fraud and force be preserved. Things impiously got, must be impiously kept. When usurped Tyranny layes its foundation in blood, the whole Superstruction must be built with Mortar, tempered with blood. One sin must defend and make good another. And hence ariseth a Necessity upon Ambitious men to steele and fortifie one Crime with another. But to plead this Necessity, which they have so wilfully drawn upon themselves, in justification of their wicked Courses. To expect submission, obedience, and an equal engagement from men uninterested therein; and to entitle the Divine Providence and unrevealed Will of God thereto (in opposition to His Will revealed and declared in the Scriptures, which is now adays used) is to accuse the Holy Ghost of our sin, and an Hypocritise so impudently sinfull and damnable, that I doubt no Age but this (the Dregs and Lees of time) ever gave an example of the like.

*numquodque
conservatur
eodem modo
quo fit.*

To illustrate my first Maxime by some foreign Examples (before I lay the Bastard at our own Doors) *Sylla at Rome*, by the power of the Sword, proclaimed (or voted) himself Dictator, to make good which usurpation with a Mask of Authority, he compelled the Senate (or Parliament) to approve of all his forepassed Villanies, Murthers and illegal Acts, and to conferre a power upon him; To kill whom he pleased and confiscate their Estates; To build and destroy Cities; Dispose Kingdomes: And exercise an Arbitrary, Supreme Authority, and then (to establish himself in his

(self-created power) he posted up at Rome, and in most Cities of Italy, Bills of Proscription or Outlawry, containing the names of such persons, as (without any form of Law or Justice) he appointed to be slain by his Souldiers. These Proscribed men were (for the most part) such as having some sparks of Roman virtue in them, durst love the ancient Government, Lawes and Liberties of Rome, and were therefore thought fit to be weeded out, as Malignants against his Innovations and arbitrary courses. Yet many meane-spirited fellows, were proscribed and murdered, partly for Confiscation of their Estates, and partly to gratifie the malice and hatred of particular friends, who (in that carnage) prayed in aid of Syllas sword to rid them of their Enemies.

After this Augustus Casar at Rome, having by terror of Arms made himself Consul, and finding himself not strong enough singly to subjugate his Country, he called Antonius and Lepidus to joyn with him, with whom entering into confederacy to subvert the fundamental Government, and usurp the Supreme Authority; they divide that vast Empire between them, and passed a Decree amongst themselves, that they should be called the *Triumvirs* for Reforming and Re-establishing the Common-wealth (well enough before if they had let it alone) with Supreme Authority to give Estates and Offices to whom they thought fit, without asking the advice of Sénate or people. They appointed what Consuls, Magistrates and Officers they pleased. They designed rich donatives, and 18. of the chief Cities of Italy to be given to their Souldiers; if, by their valour they shall obtain victory over Brutus and Cassius. They fixed publick lists or Tables of Proscription, naming such persons as they exposed to slaughter. They proscribed at one time 130. Senators, at another time 150. and 2000. Knights. Whereby the best men for understanding, Conduct, Resolution and Affection, being cut off, the rest (terrified by their example) became but *Terra Maledicta* (as Chymicks call it) dull livelesse Ashes or clods of Earth, without power

power or vertue to quicken them, or make them productive. After some revolutions, wherein *Augustus* and *Antonius* had discarded the dull and stupid *Lepidus*, and (at last) *Augustus* had subdued *Antonius*: *Augustus* usurped the Title of *Tribune of the People*, whereby his Person became sacred and inviolable; and (humouring the irrational Animals) took upon him the speciall Protection of that Brutish Herd, the Rascal Multitude, the Tribunes of the people having been originally instituted to Protect the people. His next step was to make himself *Perpetual Dictator*, whereby he arrogated to himself a vast unlimited power above all Lawes. The Tribuneship was his Buckler. The Dictatorship was his Sword. And last of all (for Ornament onely) *He having already full power of an absolute Monarch* (although he forbore the Title of (King) because it was hatefull to the people, and against the Laws even since the *Regifugium*) he took upon him the Title of *Princeps Senatus*, or *President of the Senate*; to keep a corresponding power over that great Counsel or Parliament: And finally usurped the Title and Office of *Imperator* or *Generalissimo* of all Forces by Land and Sea, Garrisons, &c.

Philip King of *Spain*, Lord of the 17. Belgick Provinces, by several Titles, and under several limitations, Privileges, Exemptions and Fundamental Lawes, according to which he was to govern, and they to obey: Resolving to subvert the Fundamentall Lawes and Government, and reduce those seventeen petty Signiorities into one meer absolute Monarchy, sent the Duke *of Alva* thither (a Warriour of a resolute stern nature) Governour, with a powerful Army; Who taking advantage of some rude Commotions formerly raised by the Protestants, in throwing down Images, and Sacrilegiously plundering Churches; erected a new *Tribunal Criminal*, or (as we speak in our modern uncouth Language) *A high Court of Justice*, consisting of 12 Commissioners or Judges purposely chosen, most of them hangers-by of the Law, of

In novum regnum vi armisque partem redigere, atque alii Novis legibus domare ac gubernare Belgium.
Metern. in anno. 1567.
Roidan in anno. 1566. John Fraunces Petis. Thouanus.

mean

mean fortunes, practice, birth, and breeding; Covetous, Ambitious, and slavishly addicted to the Spanish Faction. To these was given by special Commission full Power and Authority to enquire into, and judge (or to hear and determine) the forepassed Commotions, whereupon *they stiled this Court, Concilium Turbarum, but the multitude called it Concilium sanguinis, or the Bloody Conventicle.* This Council or Inquisition did supersede or extinguish the authority of all other Courts of Judicature, and make void all Laws, Constitutions, Jurisdctions, and Priviledges of the Nation, as to the aforesaid commotions, and all other causes they pleased to call High Treason. *They had no other bounds nor limits in their proceedings, then what they prefixed to themselves in certain Articles.* Some few whereof I will here present unto my Reader, because *they judged of High Treason by those Articles, not by the known Laws of the Land (a thing very observable and applicable to my purpose) so that they were not only Judges, Leges dicere, but also Law-makers, Leges dare: as all Judges are who take upon them a liberty to observe no set forms of proceedings, but as their own pleasure.*

Petitioning against Innovations in Government, and for the known Laws made Treason, the like

1. *Article.* All Petitions heretofore rendered to the States, or Cities Corporate against the erecting of new Episcopal Sees: or against the Holy Inquisition: or requiring a Moderation of Decrees or Acts of State, Parliament, are accounted meer conspiracies against God and the King.

the Parliament practiseth against such as petitioned for peace by accommodation. And against our High Court of Justice, Arbitrary Imprisonments and Taxes.

2. *Arr.* All Nobles, Gentry, Judges, Magistrates, and all others who connived at Heretical Sermons, plundering of Churches, and delivering such Petitions as aforesaid, pretending the necessity of the times, and did not resist and oppose them.

3. Art. *Whosoever affirms that all His Majesties Subjects of Belgia have not forfeited their ancient Priviledges, immunities and laws for Treason: and that it is not lawful for the King to use and handle them for the aforesaid Treasons as he pleaseth, to prevent the like Treasons for the time to come, and that the King is not absolved thereby from all Oaths, Promises, Grams, Contracts and Obligations whatsoever.*

We have forfeited our laws by conquest, or else our Grantees would not pass the two Acts for Treason, 14. May, 17. July,

1641, nor erect the High Court of Justice, and abolish our ancient laws and government. See Pol. 3. Oct. 1650. and the Case of the Kingdome stated.

4. Art. *They that affirm this Council or High Court of Justice exercise Tyranny in their Proceedings, or Judgements; and that they are not Supreme and competent Judges in all cases Criminal and Civil.*

Compare this with the two Acts for New Treason, 14. May, 17. July, Case stated.

1649. and the Act 26. March, 1650. and Sir John Gells

5. Art. *Those that in case of Heresie deny, that all manner of Informers and Witnesses of whatsoever Degree and condition they be, are to be credited: and that upon the Testimony of any two witnesses, this High Court ought to proceed to Judgment, Execution, and Confiscation of life and goods, without publishing the cause or charge, and without any legal form of Trial. All these are guilty of High Treason against God and the King.*

Our High Court of Justice exceeds all this. See Sir John Gells Case stated, Printed Aug. 1650.

The Rigour, Cruelty, and Injustice of this New erected Counsel of Blood, or High Court of Justice, enforced the Low Countries to revolt and cast off the King of Spain.

Let us now examine whether in some one little Province or Island belonging to that vast Roman Empire: and in some mean petty fellows (Natives of that Island) men even of obscure Birth, Breeding, and Fortunes; we cannot

not

not finde examples of Ambition, Usurpation, and Tyranny, as high and transcendent, as bloody and destructive, as covetous and greedy, as any of the fore-recited presidents: And (which is worst of all) carried on by those that call themselves Christians, nay Saints, (which is more then they vouchsafe to Saint Peter and the rest of the Apostles, though glorified Saints in the Church Triumphant) and such as in all their bloody, oppressing, cheating Designs (promoted by Perjury, Treachery, breach of Faith, Oaths, and publick Declarations) pretend to the singular favour, Providence and will of heaven, as confidently, as if they could shew Gods speciall Commission, to warrant Usurpation, Treason, Tyranny, and Thievery.

It is not unknown by what Artifices, frauds, falsified promises, Oaths, and Covenants, a party of *Animanarchists*, *Schismatics*, and *Anabaptists* lurking in the Parliament fooled the People to contribute their blood and money towards the subduing of the King (and in him of themselves) and how by the same wayes and subtilties the said party in the two Houses (now combined openly, under the Generall Title of *Independents*) engaging and conspiring with the Officers of the Army and Souldiery, expelled by armed force seven parts of eight of the House of Commons, leaving not above 43. or 44. of their own engaged party sitting, (men enriched with publick spoils) and voting under the power of the *Armies Commanders*, whose commands are now become a law to the said sitting Members, as their Votes are become Laws to the Kingdome. In Obedience to their said Matters of the Army, The said remainder of Commons voted down the House of Lords (though an integral and principall Member of the Parliament of England, far antienter than the House of Commons, and having a power of Judicature to administer an Oath (which the House of Commons never had, nor pretended to have, untill this time that they overflow their Bounds, and the whole Kingdome, under the protection of their Army) which

which prerogative of the House of Lords is clearly demonstrated by the House of Commons standing bare before them at all conferences, as the Grand Inquest doth before the Judges, because they rejected the Ordinance for Triall of the King. And now these dregs and Lees of the House of Commons take upon them to be a compleat Parliament: To enact and repeal Statutes; To subvert the Fundamental Government, Laws and Liberties of the Land; To pull up by the Roots without Legall proceedings, every mans private property and possession, and destroy his life: To burden the people with unsupportable, unheard-of, unparliamentary Taxes, Impositions, Excise, Freequarter, buying of New Arms after the Countrey have been disarmed of their old Arms three times in one year; Pressings and Levying of Souldiers, Sequestrations, Plundering of Houses and Horse, and many other oppressions, more than the *Turke*, *Ruse*, or *Tarter* ever heard of: of all which our *Grandeess* are free, and lay them upon others as partially as they please, purposely to consume them. To make Religion but a halting horse to their Designs, and the Ministers thereof be hotllers to rub down, curry, and dresse it for their riding; to whom they send Commands, what they shall, and shall not preach to the people; as if preaching were the Ordinance of man, not of God. At last by way of preparative to their machinations, they passe these following Votes.

In their Tax Rolls they usually set in the Margent to every name private notes of distinction, as M. an N. or P. The letter M. stands for Malignant; he that is so branded is highly taxed, and his complaints for redresse sleigh-

ed. N. stands for Neuter, he is more indifferently rated, and upon cause here, may chance to be relieved. The letter P. signifies a perfect Parliamentarian: he is so favourably taxed, as he bears an inconsiderable part of the burden; and thus they may the better consume with Taxes and want, all such as do not con-
cur with them in the height of their villanies. The pretended Parliament are now debating to raise the monethly Tax to 240000 lib. or to deprive every man of the third part of his Estate, both Real and Personall, for maintenance of their immortal Wars, and short lived Commonwealth. Besides Excise, Customs, Tonnage and Poundage, Free-quarter, finding Arms and Horses, and the sale of Corporation Lands now in agitation. Whilest our *Grandeess* enrich all the Banks of Christendome with vast summes raised by publick Theft and Rapines.

1. *That all Supreme power is in the people.*
2. *That the Supreme Authority under them, is in the peoples Representatives, or delegates in Parliament assembled.* Meaning themselves (you may be sure) the Quintessence and Elixar of the House of Commons, extracted by those learned Chimicks, Doctour Fairfax, Doctour Cromwell, and the rest, graduated at that degraded University of Oxford. Here note they voted the Supreme power to be in the people, that they might use those Gules as Conduit pipes or Trunks to convey the Supreme Authority into themselves, the better to enslave the people; And Tickle them, whilst they fasten about their necks the Iron yoke of a Military Oligarchy, wearing the Mask of a perpetual Parliament.
3. *That whatsoever the Commons in Parliament shall enact, shall have the power and force of an Act of Parliament, or Law, without the consent of the House of Lords, or the Kings Royall Assent; any statute, Law, custome or usage to the contrary notwithstanding (they might have said all our statutes, laws, customes, &c. notwithstanding) This one vote hath more of Dissolution and more of Usurpation and Innovation in it, than any I yet ever read of; This is universally Arbitrary, and layes the Ax to the root of all our Laws, Liberties, Lives, and properties at once.*

What these men will, they vote:

What they vote is Law.

Therefore what they will is Law.

4. *That to wage war, or to bear Arms against the Representative body of the People, or Parliament is high Treason.* By the Law all Treasons are committed against the King, his Crown and Dignity.

5. *That the King hath taken up Arms against this Parliament, and is therefore guilty of all the blood shed this War, and should expiate those crimes with his blood.* If the King

was

were not guilty, these men are ; And therefore they passed this Vote, *Se defendendo*. Yet observe that herein they became Judges in their own cause, and forejudged his Majesty before his Trial, if that may be called a Trial, that was carried on by men, who were both Accusers, Prosecutors, parties and Judges ; and had neither Law, president, formality of proceedings, nor any other foundation of Justice or Reason to warrant them, nor were delegated by any lawfull Authority ?

These Votes thus passed, and by this kind of men, were the foundation upon which they built their great Engine to destroy the King and Kingly Government, together with the Religion, Laws, Liberties, Lives, and properties of the people ; all condemned in that deadly sentence given against the King. For having (as aforesaid) created (by their own Votes) themselves as absolute a power as they pleased, and cast the people and all they have into that bottomless Chaos of their Arbitrary Domination : They erect an Extrajudicial, unpresidented High Court of Justice to Try (or rather to condemn without Trial) the King, consisting of 150. Commissioners, Souldiers, Parliament men, Trades men ; the most violent, engaged and factious incendiaries of all the Antimonarchical faction : Amongst whom were many low conditioned Mechanics, and Banquerouts, whose Fortunes are since repaired out of the Kings Estate, and other publick Lands, Goods, and Offices, as a reward for that Royal Blood they spilt. The King the Fountain of Law, Justice, Mercy, Honour, War, and Peace ; the Head of the Parliament, and Supreme Governour over all persons, and in all causes. Thus violently removed ; presently (as if the Mounts and banks of the Sea had been overturned) an immense inundation of bloody, thievish Tyranny and Oppression brake in upon us : So that no man can call his life, liberty, house, lands, goods, or any other his Rights, or Franchises his own, longer then the gracious aspect of some of our Grantees shine favourably upon us.

See Stat. Recognition
1 Jac. The
Oaths of Allegiance, Obedience and
Supremacy,
and all our
Law-books:

In the next place: contrary to their own Declarations of the 9. Feb. and 17. March 1648. Wherein they promise that in all things concerning the lives, liberties, and properties of the people, they will observe the known laws of the Land, with all things incident thereto, *They pass misbegotten Acts of Parliament, one of the 14. of May, another of the 17. of July, 1649. whereby* (in derogation and annihilation of that excellent Stat. 25. Ed. 3. Chap. 2. Ascertaining Treasons, and reducing them to a small number, and leaving nothing to the interpretation of the Judges, that the people might not be ensnared: *they exceeding by multiplying Treasons, bringing bare words as well as deeds within the compass of that offence: and making many duties to which the laws of God and the land, the Protestation and Covenant, the oaths of allegiance, obedience, and supremacy oblige us, to be high treason, and these new acts of treason penned in obscure, ambiguous terms, purposely to leave a latitude of Interpretation in (their own creatures) the Judges, that the People may be ensnared.*

This Stat. 15. Ed. 3. c. 2. S. Johns against Strafford, calls the security of the people. And the Stat. 1 Hen. 4. cap. 10. Ed. 6. cap. 12. I. Marie I. ratifie and highly commend.

They have converted our ancient Monarchy into a Free-state; and tell us they are the State. They tell us they have bestowed Liberty upon the people: but they and their faction onely are the people: All the rest of the English Nation are annihilated, and reduced to nothing, that these fellows may become all things: Meer siphers, serving onely to make them of more account. And this gross fallacy must not be dispured against, lest their New Acts of Parliament call it Treason.

The King thus taken out of their way, They passe pretended Acts, 1. *To disinheris his Children.* 2. *To abolish Kingly Government for ever.* 3. *To convert our ancient welltempered Monarchy into that which they call a Commonwealth, or Free-State;* although nothing be therein free but their lusts: nor hath it any form or face of Civil and just Government; wherein a confused Multitude rule by their own Wills, without Law: and for their own benefit; no consideration being had of the good and happinesse of the people in general. 4. *They Constitute a Senate, or Council of State of 40. men* (amongst which some Trades-men, Souldiers, illiterate Lawyers, Parliament-Members, men already engaged over head and eares in sin, therefore to be confided

to these or any nine of these they entrust the administration of this Utopian Commonwealth, and these they would have us believe (without telling us so) are the Keepers (or Gaolers) of the Liberties of *England*.

These things being but Introductions to the Usurpation of these Kinglings : and having been already shewed to the world by many pens. I content my self to give a cursory view of them, and hast to my intended task, to shew that this Usurped power is kept and administred by as wicked and violent policies, as it was gotten by.

The first endeavour of all Tyrannical Usurpers is, To lessen the number of their Enemies ; either by flattering and deceiving them : or by violently extirpating and rooting them out. And such have been the attempts of our new *Cromwellian* Statists, ever since (without any calling from God or the people) they took upon them the Supreme Authority of the Nation ; subverted our well-mixed Monarchy, and created themselves a Free-State.

1. They endeavoured to sweeten and allure to act with them, as many of the Secured and Secluded Members, Ministers, and other Presbyterians, as they could, to the end that *ex post facto* being guilty of their sins, they might be engaged in one common defence, and go halves with them in their ignominy and punishment, though not in their power, profit, and preferments, in which the Godly will admit no rivals, but (like their Patron the Devil) cry all's mine. But this Design failed for the most part.

1.
A Collusive
Accommoda-
tion.

2. Their second Endeavour was how to diminish the number of their Opposites, Royalists and Presbyterians, by a *Massacrè*, for which purpose many Dark Lanthorns and Poniards were provided last Winter, 1649. But fame prevented this plot : which coming to be the common rumour of the Town, put them in mind of the danger, infamy and hatred that would overwhelm them. So this was laid aside.

2.
An intended
Massacre.

At last they invented two other Engins, no lesse bloody then, and as effectual as a *Massacre*.

3.
The Engage-
ment.

3. The Engagement is the first of these two Gins, which all persons are enjoined to subscribe by their Act 2. *January 1649. To be true to the Common-wealth of England, as it is now established, without a King, or House of Peers.* And this is obtruded under no lesse penalty, then, To be totally deprived of all Benefit of Law whatsoever. Now the Laws of the Land being the only Conservators of our Lives, Liberties and Estates, (without which Laws all men have a like property to all things; and the strongest have right to all is posselt by the weaker; since the Law onely distinguisheth *Meum* and *Tuum*) what is this but to expose the Liberties of the Non-Engagers to false Imprisonments; our Estates to rapine, spoil, and injustice: and our Lives and Persons to wounds and murders, at the will and pleasure of such as will engage with our Usurpers: but especially at the pleasure of their own Souldiers: to whom (I conceive) this Outlawry was intended as an Alarum or Invitation to plunder and massacre the Non-Engagers, and to pay themselves their Arreares (of which these Parliament men have coustened them) out of their Estates, and though the Souldiers were not so wicked as their Masters, yet we daily see many good Families in *England* despoiled of their Estates, for want of protection of the Laws, brought to miserable beggary, rather then they will wrong their consciences by subscribing this damnable Engagement, contrary to the Protection and Covenant imposed by this Parliament, contrary to the known Law of this Land, which this Parliament hath declared to observe and keep in all things concerning the lives, liberties, and properties of the people, with all things incident thereto; contrary to this Parliaments reiterated Votes, that they would not change the Ancient Government, by a King, Lords and Commons. And contrary to the Oathes of Allegiance, Obedience, and Supremacy: Whereby (and by the Stat. of Recognition, 1 *Jac.*) our Allegiance is tied onely to the King, his Heirs and lawfull Successors; from which no power on earth can absolve us, and

As much we attest in the Oath of Supremacy. *Politicum* (Interpreter to our new State-puppet play) *Numb.* 19. from *Sept.* 19. to *Sept.* 26. out of the dictates of his Masters tell; us, that in answer to the Kings Act of oblivion granted, the Parliament intends to pass an Act of General pardon; for which they expect in future a General obedience and submission to the Government (you see though they will not be the Kings subjects, they will be his Apes) and in the beginning of the said Pamphlet, *Politicum* saith, That Protection implies obedience, otherwise they may be handled as publick Enemies and Out-laws, and ought to be destroyed as Traitors. Here you have the end to which this generall pardon is intended; it is but a shooing-horn to draw on the smott penalty upon Non-engagers, appointed by the said pretended Act 2. *Jan.* 1649. to weed them out of this good Land, that the Saints only may enjoy the earth and the fullness thereof; to which purpose all their new coyned Acts and Laws are directed. The Scripture points forth these kind of men, when it saith, *The Mercies of the wicked are cruel.* The sum of all is, If we will not acknowledge Allegiance to these Mushromes, we shall be Traitors without Allegiance (a Treason never yet heard of in any Law.) If we will acknowledge Allegiance, we put our selves in a capacity to be Traitors, when they shall please to make us such. But let them know, That we are all Englishmen, Free-born and free, under the protection of an ancient, legal Monarchy, to which we owe Allegiance; and how we come to forfeit the legal Protection, our settled Laws and Government; and be subjected to a New, unknown protection obtruded upon us by a company of upstarts (Mushromes of Majesty, to mean in birth and breeding (for the most part) that the place of a Constable equalls the highest of their education) imposing what Laws and conditions upon us they please; I would be glad to hear without being hindred by Guns, Drums, High Courts of Justice, and other Instruments of Violence and Murthér. But the greatest Mistery in this cheat

cheat is, That our Self-created Supremists, having voted the original power to be in the people, and but a derivative authority to be in themselves as the Representative of the people, should notwithstanding so yoke their Sovereign Lord the people, and make them pay Allegiance to their own Delegates (the eighth part of a House of Commons) under the penalty, unless they subscribe) as the far major part have not) of out-lawing and depriving all the people of this Land of all benefit of the Laws they were born to ; and consequently of annihilating and making them no longer a Nation or people. As if they were meer Salvages, newly conquered, collected and formed into a politick body or Commonwealth, and endowed with Laws newly invented by the Novice Statists. But the unlawfulness of the said Engagement with the Injustice of the Self-created power that obtrudeth it hath been handled by many good pens, especially by the *Cheshire* and *Lancashire* Ministers in their plea for Non-subscribers. Therefore I pass on to my principal scope; *The second Engine appointed to root out all such as are of a different party, the High Court of Justice.* A formidable Monster, upon which no pen (that I know of) hath yet adventured.

4.
The High
Court of
Justice.

4. In treating of the High Court of Justice, I must consider, 1. *By what persons and Authority* this new erected unrepresented Court is constituted? 2. *Of what person it is constituted?* 3. *The way and manner of their proceedings?* What Formalities and Laws they observe therein? How suitable to the known Laws of the Land, and the Parliaments Declarations, Protestations, and Covenant they are? 4. *To what end this Court is constituted?*

1. *The Persons constituting this extrajudicial Court* are the present pretended Parliament, consisting of forty or fifty thiving Commons only, who conspired with *Cromwell* and the Army to expell seven parts of eight of their Fellow-Members, without any cause shewn, abolished the House of Peers, erected this High Court of Justice (in

nature

of a Court Marciall) to murder the King, abolished
 Kingly Government, turned it into a thing they call a
Free State, disinherited the Royall Family, and now usurp
 in themselves (without any calling from God or the People)
 more than a Regall, Legal, or Parliamentary Authority,
 wherewith they have subverted the Fundamentall Go-
 vernment, Religion, Laws, Liberties and Property of the
 Nation, and envasallized and enslaved them to their Arbi-
 trary Domination; the authority by which they erect this
 extrajudiciall Court is, *The usurped, Legislative power*; by
 colour of which they passed an Act dated 26. March. 1650.
 establishing the said High Court of Justice. Yet their
 own creature Master St. Johns, in his Argument against the
 2. of Strafford (in a Book called Speeches and Passages of
 this great and happy Parliament, printed by William Cooke,
 1641. pag. 24.) saith, *The Parliament is the Representative*
of the whole Kingdome, wherein the King as head, The Lords
are the more Noble, and the Commons the other Members,
are knit together as one body politicke; The Laws are the Ar-
ties and Ligaments that hold the body together. (And a
 little after) *Its treason to embeset a Judiciall Record, Straff-*
ord swept them all away. Its treason to counterfeit a 20 s.
piece; here is a counterfeiting of Law (so in these coun-
terfeit new Acts) we can call neither the counterfeit nor
the one our own. Its treason to counterfeit the great Seal
for an acre of land, no property hereby is left to any land
at all (no more is there by the Votes and practise of our
new Supremists (thus far Mr. St. Johns.) But that the
Parliament doth necessarily consist of the King and the two
Houses assembled by his writ, and can passe no Act without their
joint consent. See the preambles of all our Statutes, all
 our Parliament Records, all our Law books, *Modus ten-*
endi Parliamentum. Hackwells manner of passing Bills.
 St. Tho. Smith de Repub. Anglorum. *Camdeni Britannia.*
 All our Historians, Politicians, and the uninterrupted pra-
 ctice of all Ages. That it is now lately otherwise practised

is not by any Law of the Land, but by the will of lawless power and Rebellion, that hath cancelled all our Laws, Liberties and properties, and subverted our Fundamentall Government, and disfranchised and disinherited the whole Nation. Yet Master St. Johns in his said Argument against Sirafford, pag. 38. was then of opinion, *That to subvert the Laws and Government, and make a Kingdome no Kingdome, was treason at the Common Law.* This Act 26. March 1650, is a new modelled Commission of Oyer and Terminer; and all the people of the Land, are by the consequence thereof disfranchised and proscribed. The illegality and tyranny thereof, they have introduced, who in this Parliament so zealously complained against the Court of the President and Counsel of York, or of the North, as an intollerable grievance (notwithstanding it had been of as long continuance as from 41. H. 8.) as appears by a worthy *Members Speech on Argument against it* (in the said Book of Speeches and Passages page 409. made by order of the House of Commons in April 1649. I finde not one Exception there made against the Court of York, to which this upstart High Court is not more liable then it. 1. The Commissioners of this High Court are not appointed to enquire, *per Sacramentum prohorum & legalium hominum*, that is, by Juries; as by *Magna Charta*, and above 30. Statutes confirming it, all Commissions ought to run. 2. They are not appointed (not sworn) to hear and determine, *Secundum Leges Anglia*, according to the known Lawes (as they ought to be) but according to certain Articles and powers given in the said Act 26. March, 1650. 3. The said Act 26. March, leaves a dangerous latitude to the interpretation and discretion of the Commissioners (contrary to what is done in the Act 25. Edward 3. chapter 2.) namely; It hath one Clause enabling them to inflict upon Offenders such punishment, either by death or otherwise corporally, as the said Commissioners, or the major part of them present shall judge to appo-

pains to Justice. This leaves it in the breasts of the Commissioners (without any Law or rule to walk by) to inflict what tortments and ignominious punishments they please, although not used in our Nation; and *arbitrary corporal pains are proper to slaves, not to subjects.* Here (after the loss of all but their bodies) the people may see their bodies subject to the lawless wills of our Grandees. And by another clause, this Act impowereth the Commissioners, *To examine witnesses upon oath, or otherwise, if need be.* This word (*or otherwise, &c.*) gives them power to examine witnesses without oath (if they cannot procure witnesses so far the Sons of Belial, and cauterised in conscience as to adventure upon an oath) even in case of life and death, and mutilation of Members; contrary to the current of all our Lawes and practise of all our Courts of Law, and of all Nations. See Stat. 1. Edward VI. chapter 12. 5. Edward VI. chapter 11. Cooks 3. Inst. page 24, 25, 26. Deut. 17. 6. *Ex ore duorum vel trium peribit qui occidit.* Deut. 17. 6. Matth. 18. 16. John 18. 23. 2 Cor. 13. 1. Heb. 10. 28. This is the most arbitrary and destroying liberty that ever was given to Judges; And such as were but professed thieves and murderers will accept or make use of. The Scripture saith, *An oath is the end of controversy between man and man. How then can they end and determine a controversy without oath?* But the end of all controversies before this Butcher-row of Judges, is cutting of throats, and confiscation of estates. And by the same clause of the said Act (*To examine witnesses*) they may, and (*I hear*) do examine witnesses clandestinely, and proceed upon bare Depositions read in Court, whereas they ought to produce the witnesses face to face in open Court, and there swear them, that the party accused may interrogate them, and examine the circumstances; and whether they contradict themselves, or one another, for sharing the Evidence? And whether they be lawfull witnesses or no? Nay (*I hear*) they do privately suborn

See Stat. 5. Ed.
6. chap. 1. &
Cooks 2. Inst.
page 26.

and engage witnesses without oath. And then produce them to swear what they have formerly related onely: and if they scruple at an oath, punish them for mis-forming the State. 4. That I may make some more use of the aforesaid Members words, *Whether the King, or a prevailing Party usurping his Kingly power, may canton out a part of his Kingdom (or cull and mark out for slaughter some principal men, and deny them the benefit of Law; in order thereto, as these Judges do) to be tryed by speciall Commission, since the whole Kingdom is under the known Laws and Courts established at Westminster?* It should seem by this Parliaments eager complaint against the speciall Commission of York, this Parliament hath determined this question in the Negative already (whatsoever their present practise to carry on their Design is) See Stat. 17. Car. 1. against the Star-Chamber. To what purpose serve those Statutes of *Magna Charta*, and the *Petition of Right*, if men may be fined and imprisoned (nay murdered) without Law, according to the discretion of Commissioners? This discretion is the quick-sand that hath swallowed our Properties and Liberties (but is now ready to swallow our carcases.) Thus far that Gentleman, Whose words then carried the Parliamentary stamp upon them. Let me adde some more exceptions of my own against this High Court of Injustice. 5. *Souldiers of the Army are appointed by the Act 26. March, to be assistant to the Commissioners*, contrary to the peaceable proceedings of the Law, which never makes use of any but Civill Magistrates and Officers of the Law. See Stat. 7. Edward 1. 2. Edward the III. chapter 3. 7. Richard 2. chapter 13. 6. *And contrary to the old oath which all Judges ought to take, in these words. You shall swear well and faithfully to serve the King and people, in the Office of Justice, &c. And that to what estate and condition they be come before you in the Sessions with force and armes, against the peace, against the Statute thereof made, to disturb the*

Exc.

Execution of the Common Law, or to menace the people, that you arrest their bodies, &c. Stat. 18. Edward 3. in Anno Domini 1344. page 144. Poultons Book of Stat. at large. But the oath appointed for these Commissioners to take, is not penned in terms of indifferency, nor doth any waies oblige them to the people, 26. March. 1550. (viz.) You shall swear well and truly according to the best of your skill and knowledge, to execute the severall powers given you by this Act (not well and lawfully to serve the people.) Besides, they swear to execute severall powers given (not to do Justice according to the Lawes.) Now the Lawes are the onely rules of Justice, by which we distinguish crooked from strait, true from false, right from wrong. This is not the work these Judges are packed for, but to execute Acts of power and will. But powers are often usurped, tyrannicall, illegall and unjust: So are these. *Injuria est quod contra legem fit.* 7. How can the House of Commons (if it were full and free) constitute a new unprejudiced Court of Justice, nominate and ordaine Judges, and enable them to administer Oaths, having never had, nor so much as pretended to have any power to judge, to nominate Judges, or to administer an Oath; as having never been more than the Grand Enquest of the Kingdome, humbly to present to His Majesty in a Petitionary way, the grievances of the people? *Nemo dat quod non habet.* 8. Suppose the House of Commons had power of Judicature, delegated to them from the people as their Representatives? *Delegati non possunt substituere Delegatos, & Potestatem sibi creditam, in alios transferre.* Delegates cannot make subdelegates, and transfer their trust to others. See Col. Andrews 3. Answers given into this High Court, for his defence. Printed at the latter end hereof.

2. My second consideration will be, *Of what Persons designed or Commissioned, this Court consisteth?* The pretended Act 26. March 1650. names 25. Commissioners, all which (for their better credit) it enacteth Esquires, amongst whom

whom are four or five that have professed the Law, (as satire as wearing a Lawyers Gown comes to) but were better known by their leisure then by their Law; untill by adhering to our prevailing Schismatics, in subverting our Laws, they seem to be eminent Lawyers. Of *Keeble* see the Triall of Lieut. Colonel *John Lilburn*, first and second Part. *Steel* cited expired Statutes at *Winchester* against Captain *Burley*. The rest are (for the most part) poor ignorant Trades men, some so young they are but lately out of their Apprenticeships, others Broken Trades-men that have compounded with their Creditors, some of vile and base professions; One or two of these Wolvish Saints (I hear) have with some difficulty escaped the Gallows for Man-slaying: *William Wibeard* Esquire is a Rope-seller: this employment may happily help him to the Hangmans Custome. *William Pemoier* Esquire was heretofore an Ape-carrier, Cherry-lickom or Mountredinctido. *Cook* a Vintner at the Bear at the Bridge-foot, he keeps a vaulting-school for our sanctified Grandees, and their Ladies of the Game. If the House of Commons had power to make Judges (which I have disproved) yet, *Ex quovis ligno non fit Mercurius*. They must name such Persons as may be competent Judges. And therefore must not chuse, 1. Ignorant men. 2. Not such as the Law calls, *Viles Personas*, men base or contemptible for their Persons or Sordid callings; Mechanics of the lowest rank. 3. Persons of Scandalous life and conversations. 4. Not Banquerouts and Indigent Persons. *Neccessitas cogit ad turpia*. 5. Not partiall and preingaged Persons, choisen to suppress another patty. As these Commissioners are engaged to the present power to suppress all others. 6. Not such as Schismatically or Heretically affected, are seasoned with such Doctrines and Principles, as neither agree with the Duties of a good Christian, a good Common-wealths man, nor a good Judge. Which two last Objections not only these Commissioners, but the pretended Parliament that commissioned them are apparently guilty of,

being all of the Independent Faction conspiring to rob and rout out all other Parties : Royallists, Presbyterians and Levellers : For which purpose this New Tribunall or Inquisition is set up. *Independency being a meer complication and Syncretismus, or rather a Sink and Common-sewer of all Errors, Heresies, Blasphemies, and Schismes, (though they pensibly differ in some inconsiderable Tenents) yet having one General end or scope at which they all chiefly aime, (viz.) power, preferment, profit, and the suppression of the Truth and Magistracy, they have likewise some common principles to fander them together, which they use as a Means conducing to that General End.* Some few whereof I will here set down for my Readers satisfaction. 1. *To tolerate no King nor Magistrate Superior to themselves, as Being a Tyranny or Bondage over the Christian Liberty of the Saints and Kingdome of Christ.* Because they know no Christian Magistrate can tolerate them, being (by the *Genius* of their Sect) enemies to all Civil Societies, whether Monarchical, Aristocratical, Democratical or Mixed ; as the Kingdome of England was before these men destroyed it. Besides their common Doctrine, *That they are appointed to break the power of the Earth to pieces, To levell the hills and fill up the valleys, That they are called, To bruise the Nations with a rod of Iron, and break them in pieces like a Potters vessell :* Which they have done in England, and threaten the like in France, Germany, &c. whereof, their Pulpits and discourses sound. *Observe their Practises in the Low Countries.* Where being by their spies and Emissaries, found out some Burgers of the same humour with themselves ; They propagated their Doctrine so far ; as to endeavour to strike the Aristocratical Members out of that Common-wealth, by moving some of the States Provincial to lessen (and so to abolish by degrees) The Lords States General (the Optimates of that State) To ruine the Prince of Orange, to whose Family they owe their Liberty ; *To dissolve the General Union of the said United Provinces, and so take in pieces* the

the whole Frame of that Republick. To say nothing of their Insolencies in fighting and killing their men, because the Belgike Lion will not strike sail to their Crosse and Harp; and in blowing up the Antelope in *Helversluce*: Which shews what good Neighbours *Holland*, and other Parts, are like to have of the New State of *England* and *Ireland* (when they have made themselves intire by the purchase of *Scotland*) that is born (like our English *Richard III.*) with Teeth in its head; and snappeth at its Neighbours before it be out of its Swadling-clouts. This is the cause that *Cromwell* before he set sail for *Ireland*, caused his Journey-men, the pretended Parliament, To passe an Act for Tollegation of all Errors, Heresies and Schismes, under the Notion of Liberty of Conscience, and Ease for Tender Consciences.

2. Their second Principle is, *That the Good things of this World belong onely to the Saints (that is, themselves,) all others being usurpers thereof: and therefore they may rob, plunder, sequester, extort, cheat and confiscate (by illegal Laws of their own making, by extrajudicial Courts and partial Judges of their own constituting) other mens goods and estates, upon as good Title as the Jews spoiled the Egyptians, or expelled the Canaanites.*

3. The third Principle. *That the Spirit (which sanctifies and illuminates these men) in every particular man blows when and where it will, sometimes this way, sometimes that way, often contrary ways: And therefore they can make no profession of any certain Rule of Doctrine or Discipline, because they know not which way the Spirit will inspire.* For this reason they are still pulling down old and setting up New Doctrines, as the *Nomades* do cottages, onely constant in unconstancy. They professe their consciences are the Rule and Symboall both of their Faith and Doctrine, by this Leaden Lesbian Rule they interpret, and to this they conform the Scriptures; not their Consciences to the Scriptures; setting the Sun-diall by the clock, not the clock by the Sun-diall. That every man must pray according to the Dictates of his Private Spirit; They reject the Lords Prayer, for fear

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of quenching the Spirit. *When they breake their Faith, Articles, Promises, Declarations and Covenant; they Allege, the Spirit is the Author thereof.* When Cromwell (contrary to his vows and protestations made to the King) kept him close Prisoner in Cari-brook Castle; He affirmed *the Spirit would not let him keep his word.* When contrary to the Publick Faith, they Murdered Him; they pretended, *They could not resist the Motions of the Spirit.* *Sua cuique Deus sit dira libido.* This Hobgoblin serves all turnes. 4. Their fourth Principle is, *That they may commit any sin, and retain their Sanctity in the very Act of sinning: For what is sinfull in other men, is not so in the Saints; who may commit any crime against the Law of God, and yet it cannot be imputed to them for sin; Because they know in their Consciences what they doe.* So tender and delicate are their Consciences, *That they are capable of any Offence against their Neighbour, without breach of Justice or Charity.* A righteous man is a Law to himself. 5. Their fift Principle is, *That seven make a Church: although men, women and children, and that this Church is Independent upon any other.* The Anapists (though they neither professe to follow Paul nor Cephas) yet declare themselves to be some of Cromwells Church, some of John Goodwins, some of Kiffins, some of Patiences, and some of Carvers Church. 6. Their sixth Independent Principle is, *That if a man be questioned for any crime, though his Judges have neither competent witnesses, proofs nor evidence of his guiltinesse, yet if they think in their Consciences he is guilty; they may condemn him out of the Testimony of their own Private Consciences.* Is it not fit men so Principled should be Judges and Jury too; and condemn men by inspiration? So Colonel Andrews and Sir John Gell were condemned; for Bernard and Pius (witnesses against them) were apparently suborned by Bradshaw and Sir Henry Mildmay against them, and sworn in the same cause; and good proof offered to the Court, that they were both Flagitious men, of scandalous life and conversation. The letter (supposed to be sent

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by *Andrews* to *Gell*) was delivered to *Bradshaw*, whereof *Bradshaw* sent a Copy onely to *Gell* at 10. of the clock at night; and had a warrant then ready to arrest *Gell*, which was done early next morning before he could conveniently discover it: Yet was *Gell* sentenced for Misprision of High Treason. See Sir *John Gells* case stated August, 1650. with Colonel *Andrews* Attestation (in his behalf) under his hand a little before his death. And though Sir *John* was impeached and Mr. Attorney prosecuted him onely for Misprision; yet had he much ado to keep that bloud-thirsty, old cur *Keeble* from taking a leap at his throat, and giving Judgement against him for High Treason. So for want of Law Sir *John* had like to be hanged by Inspiration and Instinct of the Spirit. He that will see more of the Independent Tenets, Let him read *Cl. Salmasius* chapter 10. *Defensio Regia, Eleuchus Maximus Imperatorum in Anglia*, And the History of Independency first and second part. These I have selected, that by comparing their Doctrine with their daily Practice, the Reader may perceive what pious Christians, good Patriots, and upright Judges, these engaged; Independent Commissioners of the High Court of Justice are like to prove. The builders of this New Common-wealth or Babel, hold forth to the People, Justice and Liberty, as their Motto: as if those excellent gifts had never received their birth, nor been so much as shewn to the People until they murdered the King, and stepped into his Throne. But how righteous a Free-state or Commonwealth is this like to be? And how well are the People therein likely to be instructed in the ways of Righteousness, Justice and Charity, and improved in good life and conversation, by men so principled as aforesaid, Let the world judge. Especially when they observe, That our New Statutes have enacted in the said pretended Act. 2. January, 1649, enjoying the Engagement, That whosoever will promise truth and fidelity to them by subscribing the Engagement, may deal falsely and fraudulently with all the world besides.

besides. And break all Bonds, Assurances and Contracts made with Non-engagers, concerning their Estates; and pay their Debts by pleading in Bar of all Actions, That the complainant hath not taken the Engagement: This is to rob the Egyptians of the good things of this world, This is to break their Faith by the Motions of the Spirit, This is to cheat and rob their Neighbours without breach of Charity or Justice, and without imputation of Sin according to their aforesaid Tenets.

3. I am come now to consider in the third place, *The way and Manner of their proceedings*; How consonant they are to the usuall proceedings of our known Lawes, and Legall Courts of Judicature; (the best Inheritance of all Freemen) whereof see Colonel *Andrews* 3. Answers in his Defence given into the said High Court, herewith printed.

1. The first course they commonly take is; To break open mens Houses, Studies, Chests, &c. and seise their Papers; and thereby hunt for Matter of Charge against them: And then to examine them against themselves, upon the said Papers, contrary to *Magna Charta*, which saith, *Nemo tenetur prodere seipsum*. And contrary to the Doctrine of Christianity, which forbids a man to destroy his own life, or be, *Felo de se*, as many men unwittingly do, who answer to captious, ensnaring questions. When our tempting question was put to Christ; *Art thou the King of the Jews?* He returned no other Answer then *Thou sayest it: why askest thou me?* Ask them that heard us, That is, Ask witnesses. It was objected against the *Quæ ex Officio*, That it was High Injustice to examine a man against himself: Because his Answers may only serve to condemn, but not to acquit him.

2. They usually break open houses with Souldiers, at all houres in the night, pulling men out of their beds with violence and Terrour, and so carry them away, upon pretence whereof Robberies and Murders have been

committed, Whereas by the Stat. 1. *Edward VI.* chapter 12. and 5. and 6. *Edward VI.* chapter 11. A man ought not to be accused of High Treason but to one of the Kings Council; or to one of the Kings Justices of the Assize; or to one of the Kings Justices of the Peace being of the *Quorum*: or to two Justices of the Peace where the Offence is committed. *Cooks 3. Instit.* chapter High Treason, page 26, 27, 28.

Witness about
3000. Scottish
Prisoners of
War starved
to death at
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are one ano-
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and many
hundred Pri-
soners have
been murder-
ed in Gaoles,
with hunger,
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on, after they
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robbed of
their Estates
and no Crime
laid to their
Charge: this
is become
a daily
practice.

3. They commit men to Prison without any Accusation or Accusor made known, and during pleasure: and detain them in Prison many yeares together without any Legall proceedings or Charge against them; sharing their Estates; Offices and Revenues (by Sequestrations and Suspensions of the Profits) amongst themselves; without any Crime objected: And so leave them to starve, rot and dye in nasty Gaoles for want of Maintenance, under the cruelty of covetous and mercilesse Gaolers, whom they bear out (for money) in all their Extortions. And being thus imprisoned and wounded with the displeasure of the State, no man dares adventure upon any security, to lend him money for fear of incurring the disfavour of the State; and a Note of Malignancy, whereby their Prisons are become private Slaughter-houses, as well as their Courts Publick Chambers of Injustice. Prisoners in the Tower of *London* (To which prison no Gaole-delivery belongs) were alwaies wont in the time of (*that supposed Tyrant*) King *Charles I.* and his Predecessors, to have allowance from the King, according to their severall degrees; As xl . a weeke for an Esquire, &c. although the King deprived them of no part of their Estates untill conviction; and this Maintenance was provided for them by the Lieutenant of the Tower; and in respect of his care and paines in procuring it he had Fees, and not otherwise, though now they continue and encrease the said Fees; the cause being taken away, the effect ceaseth not. But these men now in power, after they have Committed men and

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and robbed them of their Estates, without cause shewen;
are so far from giving them any allowance to feed them,
that they shut them up close Prisoners in unwholsome
Chambers, denying them the Liberty of the Tower, and
the benefit of fresh Aire (the *Camelions Dier*) for: their
health, and resort of friends, for their accommodation.
And that they may be sure to *deprive them of all legall means*
by habeas corpus to recover their liberties; They Commit
men by *illegall warrants*, not expressing any particular of-
fence or cause for their Commitment: so that it is impossi-
ble for the keeper of the prison to obey the *habeas corpus*,
which is directed to him in these words: *Præcipimus tibi*
quod corpus A. B. nuda cum causa detentionis sue, habeas
nam nobis, &c. ad recipiendum ea quæ curia nostra, &c.
Whereupon the Gaoler or Sheriff is to bring his Prisoner to
the Bar, and tender his *mittimus* to the Court, shewing
the particular cause of his Imprisonment, that the Court
may judge whether it be Legall, or no. *Dolosus versatur*
in Generalibus. In the Acts of the Apostles, chap. 25. verse
26. 27. *Festus* thought it unreasonable to send *Paul* a priso-
ner to *Caesar* (to whom he had appealed) and not wishall to
justify the Crimes laid to his Charge. See *Cooks 2. Instir.*
6. 591.

4. Their usuall Course of *practising and suborning wit-
nesses, tempting them with hopes and terrifying them with
fears*, is so notorious; That it is known the Counsell of
State have hundreds of *Spies and Intelligencers, Affidavis-
sons and Knights of the Post*, swarming over all England,
as Lice and Frogs did in *Egypt*: and have both *Pensions and*
salaries for every Pole brought in: So that now the whole
Nation is proscribed, and every mans head set to sale, and
made a staple commodity, (far beyond the definite Pro-
scriptions of *Silla* and the *Triumvirate* aforesaid) These
Sons of *Belial* are sent forth to compass the earth seeking
whom they may devour. These, (with the Liberty of
Privileged Spies) speak bold language to draw other men
into

into danger: and plot conspiracies, which themselves detect, and are rewarded like Decoy Ducks for their paines. Of this sort are *Bernard* and *Piss* set on work to betray *Gell* and *Andrewis*, as aforesaid. For which *Bernard* had 300l. and a Troop of horse conferred upon him. *Johnson* that falsely accused *Sir Robert Sherley*, and *Colonel Egerton* for their charity in relieving his wants, is another; *Varney* is a Fourth. So well are they fitted with these Sonnes of *Belial*, that no *Naboth* can keep his Vineyard, if a Grandee cast a covetous eye upon it; they can prove what they list. Nay it is usuall for our Grandees to molest one man with examining him twenty or thirty severall times, against one Prisoner, and upon one point, to distract his memory, and not to let him be quiet untill he perceive he must speak what their questions and discourses lead him to, to redeem himself from vexation. To say nothing of their Menaces, To torture men if they will not confesse, what they impudently pretend is already discovered by other meanes: And their insinuating into the Affections of witnesses, by asking them, Whether the State doth not owe them money? And why they do not use fitting meanes and opportunities to recover it? And why they do not make meanes for some beneficiall employment?

5. In *Magna Charta*, chapter 29. it is enacted, *That no Freeman shall be taken or imprisoned; or be disseised of his Free-hold or Liberties or Free-Customs, or be outlawed or exiled, or any otherwise destroyed; nor we will nor pass upon him or condemn him, but by lawfull Judgement of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man, Justice or Rights.* See Statute 2. *Edward III.* chapter 8. 5. *Edward III.* chapter 9. 14. *Edward III.* chapter 14. 25. *Edward III.* chapter 4. 11. *Richard II.* chapter 10. Pet. of Right 3. Car. 1. 10. *Edward IV.* folio 6. Dier folio 104. Cook lib. 5. folio 6. Hb 10. folio 74. lib. 11 folio 99. Regist. folio 86. Where
note

the word (*Peers*) signifies, that no man is to be con-
 demned or destroyed, but by the lawfull verdict of a *Jury* of
twelve sworn men of the Neighbourhood where the Fact was
 committed; because (in probability) Neighbours may
 have best cognizance of the Fact, and of the life and con-
 sideration of the Party Accused. And these onely are *Compe-*
tent Judges of Matter of Fact; and in many cases of Mat-
 ter of Law too, if they will take the knowledge of the Law
 upon them. Neither can this Petty Jury of 12. men go up-
 on the Prisoner unless a *Bill of Endictment* containing the
 whole Matter of charge be first found in open Court by a
 Grand Jury or Enquest of sworn men; who are to enquire
 of the Fact upon the Oathes of two lawful witnesses (at
 least) to every material Point of the Endictment: and
 then, when the Grand Enquest are all agreed, the Foreman
 subscribeth upon the back of the Bill (*Billa vera*) and then
 presents it in open Court, as the Information for the King
 of the whole Enquest: otherwise the Endictment is quashr,
 and null. Cookes 3. Instit. chap. High Treason and Petty
 Treason. And whereas the Statute saith, (but by his Peers,
 or by the Law of the Land) *Lex Terra*, signifies, The
 Ancient Customes of the Land; Amongst which Funda-
 mental Customes, Trialls by Junies hold a principall place.
 And when the King Charles I. accused this Parliament, That
 they disposed of their Subjects Lives and Fortunes by their
 vote, contrary to the known Laws of the Land; This Par-
 liament in their Remonstrance, September 1642. (1. Part of
 the Book of Declarations folio 693.) highly resented it.
 And *Magna Charta* being nothing else but an Affirmation
 of the Common-Law, inserted this Clause (*or by the Law*
of the Land) as a speciall caution, not to annihilate or fru-
 strate (no; not so much as tacitely, or by preterition)
 any of the said Fundamentall Lawes or Customes;
 nor any other particular lawfull Customes, which are
 wont and the same in all parts of *England*: Witness the
 Custom of *Gewitkind in Kent*. I have told you what our
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known ancient Legal Courts of Justice do. And I must tell you that *Legal formes and set Modes of proceedings are so essentiall unto Justice, that without them we cannot measure the Rectitude of Obliquity, of Justice or Injustice*: where they do not chalk forth the way, both Judges, Lawyeers, Officers and Attorneys will tread what subtle, obscure pathes they please, usurp an Arbitrary power and latitude to prevaricate; and so far corrupt and work the Law of their sense, that they will rather *Leges dare*, then *Leges dicere*, so that what is Law in one mans case, shall not be so in another mans. They will so intricate and intangle causes; that every case shall be *Casus pro amico*; as Civilians call it; when upon full hearing, The Merits of the cause appear so equall, and undistinguishable on both parties; that the Judge may (according to his discretion) look upon the Merits of the Persons only: and give the cause; *Pauperiori, via Charitatis*, or *digniori, ratione virtutis*. Justice not fixed by Formalities, will become such a vagrant, that no man shall know where to find her. Let us now see what our new Shambles, our upstart Hight Court doth. Which in this work of Reformation and Destruction, so much abhorres Superstition and Ceremonies, and sticks so close to a Summary way of proceeding, that they have not onely stripped, but flead her: as their Masters the Parliament not onely fleece but flea the People. In lieu of a Bill of presentment, by a Grand Enquest, the pretended Parliament or Counsel of State, send a *List of such Persons names*, as they have proscribed; And set a *Nigrum Thea* upon, (as men dangerous to their designed interest) to the Masters of their Slaughter-house, The said High Court, together with such Depositions as they have taken in corners, against the Prisoners: and this is such a forejudging of them, that the said Court neither will nor dare acquite, whom their Masters and Pay-masters have precondemned. Next *Articles of Impeachment in nature of a charge* are drawn up against the Prisoner (although such Articles are nothing in Law, which regards onely a Bill of Indictment.)

ment.) Then the Prisoner (after a close Imprisonment for he knows not what,) upon two days warning is led to the Bar; where the first work is to dazle his eyes, amaze and distract his Judgement and Memory with the terror of their Souldiers; the Numerousnesse, high affronting words and looks of his Judges; having thus mortified the Prisoner, he is commanded to hear his charge read: and bid *plead so it, Guilty, or not Guilty.* If he own their Jurisdiction and plead the said Generall Plea, they have him where they would have him: they never ask him, how he will be tried, Whether by God and his Country? For God hath no hand in these proceedings, nor amongst such Judges: and this rod of Iron is provided to bruise his Country, as well as himself. Lieutenant Colonel Lilburns Trial hath taught them, That it is an easier Matter for them to pack a Butcher-row of confiding, partial Judges, then a Jury; who are liable to be challenged, if suspected of partiality. When Colonel Andrews desired to be tried legally as a Free-man by a Jury; and touched Great Charter, and many other Statutes, (whereof in his aforesaid 3. Answers) that sneaking Bloud-sucker,iterate Keebl answered, Those Statutes were out of date now, (meaning, They were taken away by conquest.) *Whether this Shamle-row of Judges, take upon them to be, both Judges of the Law (without acknowledging the Fundamentall Law of the Land, or taking any Oath of Indifferency to the People), Triors of the Fact, or Jurates of life and death (without being sworn to find according to Evidence) as well as Parons and Prosecutors.* Theeves upon the high way may as easily arraign a True man before them, because he brought more Money in his purse, offered to draw his sword and bid his money about him in contempt of their Jurisdiction and Authority; and condemn him upon such a Mock Triall and Mummery or Enterlude of Justice, as these Fellows. *If they allow him Counsel, his Counsel must apprehend the hands of his Judges, at his perill; and not be so faithfull and diligent as to help his client in earnest; Lest the Council of State, or some other power (whose will is a Law) interpose, and banish him 20. miles from London; as they did*

Master Sprat, Sir John Gells Solicitor, before Sir Johns busi-
 nesse was ended; whereby Sir John was left destitute of
 meanes to follow his businesse, himself being Close Prisoner.
 If they permit any witness to speak on the prisoners part, He
 comes at his perill: Sir John Gells first witness was so baffled
 in Court, that the rest stole away and durst not appear. I
 have not heard whether they give any Copy of their Articles
 of Impeachment to the Prisoner, (for they cover all their do-
 ings with such a Plaguy Egyptian Darknesse, that we cannot
 see a glimpse of light) or whether they go a Starre-Chamber
 way, and make him answer *Ore tenus*, and *ex tempore* for his
 life and Estate. But if they give him any Copy, or any time to
 answer, it is not above four or five days or a week, nor do they
 allow him Counsel or any other clearing of the way to his de-
 fence, untill he have ensnared himself by owning their Juris-
 diction, and pleaded the General Plea, Not Guilty. If he
 plead not an Issuable Plea, and yield to their Jurisdiction, quin-
 ting all benefit of the Law and Legall proceedings; the Rack
 is at his throat, they thirst after his Blood; and they presently
 sentence him guilty of contumacy, and take it pro confesso.
 And if he do submit and plead: His plea will have the op-
 ration but of a Psalm of Mercy, prolonging his life but for a
 short time, in the interim Keeble and his Court plays with him
 as a Cat with a Mouse, and then devours him. For no man is
 sent to this Court to be Tried, but to be condemned. In hac arena
 dimicatur sine missione. Herein they shew themselves much
 more Tyrannous and bloody then the Duke D'Alva when
 he erected his said Counsel of Troubles, called *Concilium
 Sanguinis*, or the Bloody conventicle; as this will shortly
 be. For saith Strada Declar. 1. lib. 7. *Procurator regium
 menses 4. Consciende Accusationi accipiens sibi*; 5. *Comode-
 bat ad Defensionem regis* (Egmontio, Hornano, &c.) The Kings
 Attorney took 4. Months time to draw up the charge or ac-
 cusation, and gave 5. Months time to the Respondents to
 make their defence. And had he given less then 5. Months
 time, To instruct Counsel, Pen their Answers, produce and
 summon witnesses, inquire into the lives and conversation

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of their Accusers, his feet had been swift to shed blood. *Nulla inquam de morte hominis cunctatio longa est.* But our Inquisitors take whole years to themselves to hunt for matter of accusation, & hire & engage witnesses against men kept in ignorance and want with cloie Imprisonment: and allow not them so many days to make their Defence. *All manner of accusers and witnesses, though apparently suborned and forsworn in the same cause, and proofs without exceptions offered to the Court that they are of infamous life and conversation, are in this Court (the Object of whose desires are Blood and Confiscations, not Justice) lawfull witnesses, such witnesses were the said Bernard and Pitt; Monsters of men. See Sir John Gells case stated: Printed about August, 1650. To cite any ancient known Laws or Statutes, or any other then their own new coined Acts, passed by this 8th. Parts of a House of Commons, (since they became elect Members chosen by Thomas Pride) is to incur the High Indignation of the Court, expressed abundantly in their words and looks. But to put them in mind of the Parliaments many Declarations, To maintain the ancient known Laws, Liberties and Properties of the People, is to scandal the present Government and incur the Censure of that unknown, mysterious Crime which knaves call Malignancy. The witnesses and Judges being thus irrefragable; the first may swear what they will, the second may judge what they will, since they are left at large and have all things in scrinio pectoris; and Book Law must give place to Bench Law, The Jurisdiction and Authority of this New unparallel'd Court is such a mystery of iniquity, so unscrutable and unquestionable, that if a Prisoner scruple (in the least) either it, or any of the un-
lawful proceedings of it, it is a Mortal Sin to him; and he is presently interrupted, and affronted both with disdainful words and looks, And told, *We are satisfied with our Authority that are your Judges,* (So are Theeves upon the high way satisfied with their Authority that rob and murder us by Gods Providence and permission.) *It is upon Gods Authority and the Kingdoms* (yet what they do is against the will of God revealed in his Scriptures: and against the known*

See the Triall
of King Char.
I. in the Hi-
story of Inde-
pendency the
second Part.
pag. 91. &c.

establishe d Lawes, Statutes and continuall Practise of the Kingdom :) *Which Authority commands you in the name of the people of England to answer them.* Yet (at least) 9. parts of 10. of the people so much abhor these and other their Practises, that every mans mouth speaks against them with bitter curses and reproaches, to restrain which they have minted Acts of New Treasons, to make men Offenders, nay Traitors, even for bare words; and erected this bloody, illegal Theater, The High Court (so called, for its High Injustice) as a *Spanish Inquisition* over them, and every mans hand would be about their eares, did they not keep an Army of Janisaries to suppress them. *Their Authority they do avow to the whole World, that the whole Kingdom are to rest satisfied therewith.* You see here a Whip and a Bell provided to keep the whole Kingdom in awe: the declared Supreme power of their Sovereign Lord the people, must resign their known Laws to their Trustees, their Representatives in Parliament, and take New Laws from their Arbitrary votes, or woe to be to their Necks and Shoulders. *I must interrupt you, what you do is not agreeable to the Proceedings of any Court of Justice, You are about to enter into Argument and dispute concerning the Authority of this Court: before whom you appear as a Prisoner; you may not dispute the Authority of this Court: nor will any Court give way to it, you are to submit to it.* It is not safe to confute a lie told with Authority. Yet if a man be Endicted of Treason or Felony in the Court of Common Pleas, a man may Demur to dispute the Jurisdiction of that Court; because it is not in Criminall Causes, *Competens Forum*; nor the Judges Competent Judges: every man, and every cause must be tried *Suo Foro, non Alieno*. So that if a Peer be arraigned in the Kings Bench. And for this upstart, unpresidential High Court; it is no Court of Judicature at all; as being erected without lawful Authority; Consisting of Incompetent Judges: no Records belonging to it, and tending to disinherit, and disfranchise all the people of England, and to murder them. *You may not dispute the Jurisdiction of the Supreme and Highest Authority of England, from which there*

no Appeal, The votes of the Commons of England assembled in Parliament is the Reason of the Kingdom. Oh Brutish, irrational Kingdom ! Where 40. or 50. Anabaptistical Members, the Dregs and lees of the House of Commons, after all the best and sincerest (7. parts of 8.) had been racked and purged out at the Bunghole by *Cromwel the Bruter and Pride his Drayman* shall be called the Reason and Law of the Land. This confirms the truth of what King *Charles I.* Objected to the Parliament (whereof I have formerly spoken) *That they disposed of the Subjects Lives and Fortunes, by their own Votes, against the known Laws of the Land.* But that there should be no Appeal to their declared Sovereign Lord the People, from their subordinate Trustees in Parliament is wonderful ; considering that in all Governments the last Appeal is ever the highest and most absolute power. But it may be they will be the peoples Trustees in spite of their Teeth, and by the power of the Sword ; and so free themselves from rendering any account of their Stewardship. *You may not demurre to the Jurisdiction of the Court.* If you do, they let you know, that they over-rule your Demurrer, and affirm their own Jurisdiction. Reason is not to be heard against the Highest Jurisdiction, the Commons of England make a direct and positive Answer, either by denying or confessing, and put in immediately an issuable Plea, Guilty, or Not Guilty of the Charge, or we will record your Default and Contumacy, and by an implicit confession take you guilty pro confesso, and immediately give Judgements against you. This (as I told you before) is it that blanches the Deer into the Toile, But God deliver us from that Jurisdiction that is too high to hear Reason: and that over-rules demurrers before they be heard. I have told you as much of the proceedings of this Court as the Novelty, Obscurity, Uncertainty and confusion thereof will give me leave. Let me now (by way of overplus) give you the great dangers and Slavery that will befall all sorts of people if they tamely and cowardly suffer themselves to be deprived of their ancient, Legal Trials by Endictment and Juries of the Neighbourhood : (then which the whole world cannot boast

boast of a more equal way) and suffer their Lives, Liberties, Estates and Honours to be subject to an Arbitrary, Extrajudiciall conventicle of Bloud, (*Cromwells New Slaughter-house*) which hath neither Law, Justice, Conscience, Reason, Prefident or Authority Divine or Humane, but onely the pretended Parliaments irrationall Votes and the power of the Sword to maintain it, which will prove a Cittadell over their Liberties, a snare to their Estates, a Deadfall to their Lives, and scandall to their honours and Families, if not timely opposed.

1. *By the Law the Enditment must specifie what the Treason is, and against what person committed; As, against our Sovereign Lord the King, His Crown and Dignity.* But in the said Articles of Impeachment, it is alleadged that the Treason is committed against the present Government; or, against the Keepers of the Liberties of *England*, but in this dead-water our turning Tide between the old Regall, and this New, unknown Government; no man knows how to do, look or speak for fear of contradicting the guilt of an Interpretative Treason, upon the said two Statutes for New Treasons, and before this boundless, lawless New Court. And to say that *Treason is committed against a Government* in abstracto is Non-sence: it must be said that *Treason is committed against the Governors in Concreto, naming them.* For there being no Treason without Allegiance; And Allegiance being a personall Obligation, must be due from a certain known Person, to a certain known person or persons. And therefore the Keepers of the Liberties of *England*, not being yet made particularly known to us, who they are, or where to be found, or what their power, Duty, Office is; and being not tied by any set Oath, to deal well and truly with the people, (as Kings are by their Coronation Oath; for if the stipulation be not mutual, the people are slaves, not subjects.) Since the Duties of Allegiance and Protection; Obedience and Command being reciprocally (as they must needs be, the Parliament having declared the Supreme power to be in the people; they must not govern them *Mare Imperio* (by Lawless votes) like *Turkish, Tartarian and Russian*

Russian Slaves.) *I cannot owe nor perform Allegiance to those Individua vaga (the Keepers or Gaolers of our Liberties) nor to an Utopian Commonwealth. And without Allegiance no Treason: for in all Endictments of High Treason it must be alleaged, That the Accused did (Proditorie) perpetrate such and such Crimes, Contra delictum Allegantium scdm. And the word (Proditorie) signifies the betraying of a Trust: According to the Proverb; In Trust is Treason. Now where there is no profession of Allegiance, there is no acceptance of a Trust, no man can trust me against my will. I was born under a Regall Government, have read the Stat. Recognition, 1. Jac. Have taken (as well as others) the Legall Oaths of Allegiance, Obedience and Supremacy to the King his Heirs and Lawfull Successors, imposed upon me by lawfull Authority, and from which no power on Earth can absolve me: and so much I attest in the Oath of Supremacy. And how I should now come (after the New Moduling of the Parliament and Kingdome by Souldiers) to owe Allegiance to Cromwell the Bruer, Scot the Bruers Clerk, Bradshaw the Murderous Petty fogger, Sir Henry Mildmay the Court Jailer and Projector, Holland the Linke-boy, John Trencharde that packed a Committee (in which he was a Member) and voted to himself 2000l. Love the super-inducted Six Clerk, or any other of that Self-created authority, let them sheath their swords and tell me.*

2. *An Endictment must certainly allege the Offence committed, in respect of the Matter, Time, Place, Persons and other Circumstances; But in these Articles of Impeachment they tie themselves to no such certainties; Whereby the accused knows not at what ward to lie, nor how to make his Defence. The Circumstances of Time, Place and Persons, being the assured Testimony of all humane actions. This Lawless Court leaves him in a vast Sea of Troubles, without Pole-star, Card or Compass to steer by: The Arbitrary opinions of this Court, declared upon emergent occasions, being a false-hearted Pilot to him. These Judges not being Counsel with the Prisoner, as our Legall Judges are, who swear to Justice according to the Law.*

3. By

See the Additionall Postscript at the latter end of this Book.

3. By the Law, any learned man that is present, may inform the Court, for the benefit of the Prisoner, of any thing that may make the proceedings erroneous. Cooks 3. Instit. p. 29. But the whole Proceedings of this Court, their meeting and sitting being erroneous, here is no room left for admonition, To take away their errors, is to take away the Court.

4. Cooks 2. Instit. pag. 51. expounding the 29. chapter of *Magna charta* hath these words. *All Commissions ought to be grounded upon the Laws of England* (not upon the votes of the House of Commons) *and to contain this Clause in them. To do what is just according to the Laws and Customs of England,* (not to execute the several powers given them by the Act 26. March 1650.) and a little further he saith, Against this Ancient and Fundamental Law I find an Act of Parliament made 11. *Hen. VII. c. 3.* That as well Justices of Assize as Justices of the Peace, without any finding or presentment by the verdict of 12. men, upon a bare Information for the King before them made, should have full power and Authority by their Discretions, to hear and determine all Offences and Contempts committed, or done by any Person or Persons, against the Form, Ordinance or effect of any Statute made and not repealed; saving Treason, Murder or Felony. By colour of which Act shaking this Fundamental Law, it is not credible what horrible Oppressions and Executions, to the undoing of infinite number of People, were Committed by *Empson* and *Dudley* Justices of the Peace throughout England. And upon this unjust and injurious Act, a New Office was erected (as commonly in like cases it falleth out) and they made Masters of the Kings Exchequers. (I hear such an other Office will be erected, when the Novelty of this wonderfull High Court is lessened, and the yoke thereof thoroughly settled upon the Peoples Necks.) Yet observe the said Act. 11. *Hen. VII. c. 3.* went not so high as to Treason, Murder and Felony: But by the Stat. 1. *Hen. VIII. chap. 6.* the said Act 11. *Hen. VII.* was repealed, and the reason given, For that by force of the said Act it was manifestly

fully known; That many sinister and crafty, forged and
forned Informations had been pursued against many of the
Kings Subjects, to their great damage and wrongfull vexa-
tion. The ill successe hereof (saith Cook) and the fearfull
end of these two Oppressors, (who were Endicted and suffer-
ed for High Treason for all the said Act 11. Hen. VII. pas-
sed in a full and Free-Parliament. Cooks 3. Instit. p. 208.)
Should admonish Parliaments, That instead of this Ordinary
and precious Triall by the Law of the Land, they bring not in
Absolute and Partial Trialls by Discretion. And in his 4. Instit.
pag. 41. Cook saith, Let Parliaments leave all Causes to be
adjudged by the golden and streightened wand of the Law, and
not the uncertain and crooked cord of Discretion: for it is not
almost Credible to foresee, when any Maxime or Fundamentall
Law of the Land is altered, what dangerous inconveniences will
follow; as appears by this unjust and strange Act. 11. Henry
VII. chap. 3.

5. This Parliament always declared they bore Arms against
the King, in Defence of the Laws, Liberties and Properties of
the People. This way ran the whole current of their Decla-
rations. And they always reckoned Magna Charta, the Pe-
tition of Right and Trialls by Juries, the Chief and most Fun-
damentall of all Laws. See their 1. Remonstrance: There-
in their 7. Article against Strafford, They charged him
with High Treason, for giving Judgements against mens
Lives, without Trialls by Juries. Much aggravated by Ma-
ster St. Johns in his aforesaid Argument against Strafford.
And for the better preservation of Legall Trialls by Juries,
it was provided in the Bill of Attainder of Strafford, that the
case of the same Earl should not be used as a President in
succeeding times. And in two of this Parliaments late De-
clarations 9. Febr. and 17. March 1648. The Parliament
promiseth; To preserve and keep the fundamental Laws of
the Land, for preservation of the Lives, Liberties and Pro-
perties of the people, with all things incident thereto. Now to
will an arbitrary lawles High Court, to give judgement a-

gainst mens Lives and Estates, and attain their bloods, without
 Endictment found by a grand Jury, and a trial by a Jury of
 twelve sworn men vicineto, is a far fouler breach of trust in
 them against their Sovereign Lords the People, than all they
 charged the King withall, and a far higher act of tyranny and
 injustice then either the late King, or Empson and Dudley, or
 Strafford were accused of. But if they alledg, They do not
 put down Juries in general, but only in some particular mens
 cases and upon necessity, I answer, *That we are all born
 Freemen of England alike, That our ancient known Law,
 Courts, and trials by Juries are our inheritance equal
 alike to all. And one party or part of the people ought not to be
 disherited, disfranchised or forejudged no more then another.
 No man can be said guilty of any crime untill he be legally
 convicted and sentenced, the Law must first go upon him and
 condemn him, Ubi lex non distinguit, non est distinguendum.
 If we do not live all under one Law and form of Justice, we
 are not all of one Common-wealth. See the aforementioned
 Gentlemans Argument, against the special Commission of the
 Courts of York. For Necessity: our present power is under
 none, but the fears and terrors of their own guilty consciences.
 No apparence nor probability of any enemy by their
 own confession; nor can they plead in their excuse, a necessity
 which they have brought upon themselves. I know
 some Kings have, de facto, used the Animadversion of the
 Sword to cut off such powerful and dangerous persons as could
 not safely be called to account by the Law; so dyed Job, Achan,
 and others, for which the rule is, Neminem adeo eminere
 debere, legibus interrogari nequeat; qui jus equum ferre
 non potest, in eum vim haud injustam fore. No man ought
 to advance himself above the powers of the Law; he that
 will not submit to equal right, if he be cut off by violence,
 suffers no wrong; but this is to be understood of the eminency
 and greatness of the person; not of the greatness of the crime,
 whereof no man is to be forejudged, because a great crime
 may prove a great saluumy, whilst a legal trial have adjudged
 it.*

5. But there is no person in England so eminent for power or authority, but that the least of Bradshaws Ban-dogs can give him to the Slaughter-house, and make him offer his throat to Keeble. Therefore *Animadversio Gladii*, if at any time lawful, is now unlawful. To make great examples upon men of little power, is great injustice. But the way of this Court is not *Animadversio per Gladium*. It is a Mocking, a Counterfeiting, an Adulterating and Alchymizing of Justice; it is to falsifie her weights and balance, and steal her sword to commit Murder with all.

6. By the known Laws Matter of fact is intrusted to the Jury, matter of Law to the judges, to prevent all errors, combinations and partialities. The Judges are sworn to do justice according to the Law; the Jury are sworn to find according to their evidence. But in this High Court the Commissioners or Judges are all packed, confiding men, chosen by and out of one party, to destroy all of a different party. They usurp the office of Judges, not being sworn to deal well and lawfully with the people (as by the said Stat. 18. Ed. 3.) nor do justice according to the Law. But onely to execute powers given by the said Act, 26. Mar. 1650. And they arrogate (as Jury-men) to be Triers of the Fact, without being sworn, to find according to evidence. So that they are judges, juries, and parties, (and for ease of their tender consciences) without any Oath of Indifferency. A most excellent Compendium of Oppression. They may go to the Devil for injustice, and not be forsworn. Great is the priviledge of the godly.

7. The prisoner may except against his jurors, either against the Array, if the Sheriff or Bailly impannelling the jury, be not wholly disengaged and indifferent, both to the cause, and to the parties, prosecuting, and prosecuted; or against the Poll, he may challenge 35. peremptorily, and as many more who can render legal cause of challenge for. As for defect of state, or other abilities, or for partiality, Disaffection, En-

See Colonel Andrews three Answers

gement, Infamy. But this Array of jury-men judges (a Medley so new we know not how to express it) though picked and empannelled by an engaged remainder of the Commons, and abnoxious to all exceptions, must not be challenged, their backs are too much galled to indure the least touch. *Take heed you scandal not the Court* (cries Mr. Attorney) See Col. Andrews three Answers.

8. *Many exceptions in a legal Trial, are allowed against Imperfection, Uncertainties and Illegalities in the Bill of Endictment, for the advantage of the Prisoner.* But no Exceptions are allowed against these illegal Articles of Impeachment, which are made uncertain; intricate and obscure, and ambiguous purposely to puzzle, confound and entangle the Respondent.

9. *By the Law a bill of Endictment must have two full and clear lawfull witnesses to every considerable Matter of Fact, both at finding the Bill and at the Trial.* Cooks 3. Instit. pag. 25, 26. And *Probationes debent esse luce clariores.* Proofs must be as clear as the Sun, *not grounded upon Inferences, Presumptions, Probabilities.* And the Prisoner must be *Provablement Attaint*, saith the Stat. 25. Ed. 3. chap. 2. Cooks 3. Instit. pag. 12. *The word (attainted) shews he must be legally proceeded with; not by absolute power as formerly had been used (and as is now used by this bloody High Court.)* But before these Slaughter-men of the High Court, all manner of witnesses, Legal or Illegal, one or two, sworn or not sworn, or apparently forsworn and suborned, and all proofs clear or not clear are sufficient. The Prisoner is sent thither foredoomed, and hath its deaths Mark, his fate in his forehead:

Where there is but one witness, it shall be tried by combat before the Earl Marial. Cooks, ibidem.

10. The said Act 26. March 1650. carries two faces under one hood, and looks backwards as well as forwards. To facts precedent as well as subsequent, the said Act, contrary to the nature of all Laws, whose office is to prohibit it before it punish, to warn before it strike. Where St. Paul denieth, *Sin to be the breach of Commandment, or Law.* I had

had not known Sin but by the Law. The Law must therefore be precedent to the Offence. But these Acts are not *Laws* to admonish, but *Lime-twigs and Traps* to ensnare & catch men. See Col. *Andrews* 3. Answers at the latter end of this book.

Fourthly and lastly, I am to consider, To what end and purpose this new invented High Court is constituted and appointed? Concerning which see a Letter dated 6. June 1650. *Stilo veteri*, from the *Hague*, (supposed to be *Walter Stricklands*, the *Parliaments Agent* there) as I find it in *Walter Poff's* brief Relations of some affairs and transactions, &c. from Tuesday June 11. to June 18. 1650. wherein the Epistoler hath these words, "One piece of the cure (*viz.* of the dangers that threaten your new State) must be *Phlebotomy*, but then you must begin before Decumbency, and then it will be facile to prevent danger, &c. they are here most of all afraid of your High Court of Justice, which they doubt may much discourage their party, they wish you would not renew the power thereof, but let it expire: then they think that after *Michaelmas* they may expect assistance with you. And indeed that Court is of almost as much use to you as an Army: and will prevent the rising of as many Enemies, as the other will destroy, only you must be sure to execute justice there with all severity. A few of the first stirrers taken away, by the power thereof, without respect to Cousin or Countrey, will keep all the rest quiet. But *whosoever that Court condemns, let them be as already dead*, &c. But let them be most free in cutting the *vena Coephalica* (that is the *Presbyterian Party*) for the *Basilica* (or Royal Party) will be latent. The *Median* (or *Levellers*) would be spared as much as may be, that the body be not too much emaciated. Besides the blood is most corrupt in the *Coephalicks* (or *Presbyterians*) and is the very *causa continua* of your disease. You need not fear to take freely of this vein, &c. Here you see this State Mountebank gives you the use and application of this corrosive. (The High

High Shambles of Justice) so fully that I shall not need to comment upon it. And in the latter end of a Letter from *Cromwell*, dated from *Dunbar*, 4. Sept. 1650. (as I find it in *Politicus*) speaking of his new purchased victory over the *Scots*, *Cromwell* saith, *God puts it more and more into your hands to improve your power*, (viz. your absolute authority) *we pray own his People more and more*, (that is, the Army) *they are the Chariots and Horsemen of Israel* (of the Kingdome of the Saints) *disown your selves but own your authority* (which you enjoy under the Protection of the Army, your Lords Paramount) *and improve it, to Curb the Proud and Insolent*, &c. (That is, all men of different opinions and parties from them, that will not engage to be true and owe Allegiance to the Kingdome of the Saints, and resign their Laws, Liberties and Properties to their lusts and wills.) That I have not misconstrued the contents of *Cromwells* mysticall letter, will appear by a *Discourse in the same Politicus*, Numb. 17. from Thursday Sept. 26. to Octob. 3. 1650. Where (according to his custome) delivering forth State-Oracles to the people, He tells them in plain English, *That after the Confusions of a Civil War, there is a necessity of some settlement, and it cannot be imagined (the Controversie being determined by the Sword) that the Conquerours should submit to the conquered, though more in number then themselves. Nor are they obliged to settle the Government again according to the former Laws and Constitutions, but may erect such a form as they themselves conceive most convenient for their own preservation. For after a Civil War the written Laws (viz. established Laws of the Nation) are of no force, but onely those which are not written. (And a little after) the King having by Right of war lost his share and interest in authority and power, being conquered, by Rights of war the whole must needs reside in that part of the People which prevailed over him: There being no middle power to make any claim, and so the whole Right of Kingly Authority in England being by Military Decision resolved into the prevailing*

*...ing Party, what Government soever is pleaseth them to
will, is as valid de Jure, as if it had the consent of the whole
Body of the People. That he should affirm, That after a
Civil War the Established Laws cease, is so grosse a piece
of Ignorance, that there is hardly any History extant but
confutes it: After our Barons War, and the Civil War be-
tween York and Lancaster, Our Established Laws flourish-
ed; so did they after the Norman Conquest. How many
Civil Wars in France have left their Laws untouched?
That of the Holy Leage lasted 40. years; *Belgia* keeps
her Laws mangre her intestine Wars: What is now be-
come of the Parliaments declared Supreme Power and So-
veraign Lord the People, the Originall and Fountain of
all just power? are they not all here proclaimed Bar-
tered Slaves for ever? But I had thought that an Army
of Mercenary Saints raised, payed and commissioned by
the Parliament to defend the Religion, Lawes, Liberties
and Properties of the people, and the Kings Crown
and Dignity, according to the Protestation and Cove-
nant, and the Parliaments Declarations, would not
have made such carnall and hypocriticall use of their
Victories gotten by Gods providence, and the peoples
money, as to destroy our known Lawes, Liberties and
Properties, and claim by Conquest, and impose their
own lusts for Lawes upon us, thereby rendering them-
selves Rebels against their God, their King and Coun-
try. Nor was it ever the State of the Quarrell be-
tween the King and Parliament whose slaves the people
should be? Or whether we should have one King, Go-
verning by the known established Lawes? or 40. Tyrants
Governing by their own lusts and arbitrary votes, against
our written Lawes? Nor can the successe make a Conquest
just, unless the cause of the war were originally just, and
the prosecution thereof justly managed. As 1. To vin-
dicate a Just Claim and Title. 2. *Ad res repetendas.* To
recover Damages wrongfully sustained. 3. To repell an
injury.*

injury done to your self, or to your Ally in league with you.

The ultimate end of these wicked endeavours is, To establish and cement with the blood of their adversaries, the Kingdome of the Brambles or Saints, already founded in blood, by cutting off all such by their said New Acts of Treason and High Court of Justice, as will not bow their Necks to their Iron yoke. Which appears more clearly in an *Additionall Act* giving farther power to the said High Court, (dated 27. *August* 1650.) To hear and determine all *Misprisions* or *Concealments* of Treasons mentioned or contained in any of the said Articles or Acts of Parliaments: And to inflict such punishments, and award such execution, as by the Laws and Statutes have been, or may be inflicted. This Law (if I miscall it not) considering how they have multiplied Treasons by their said 3. New Statutes, 14. May, 17. July 1649. and 26. March 165. Whereby bare words without Act are made High Treason, contray to those well approved Statutes, 25. Edward 3. chap. 2. 1. Henry 4. chap. 10. 1. Edward 6. chap. 12. 1. Mariz, chap. 1. Cook 3. Instit. saith, That words may make an Heretick not a Traitor, Chap. High Treason. And the Scripture denounceth a woe to him, That maketh a man an Offender for a word, is one of the cruellest, and most generally dangerous and entrapping that ever was made. For hereby all relations, Husband and Wife, Parents and Children, Brothers and Sisters, Masters and Servants, are all enjoyned to be informers against, and accusers of one another (which is to take upon them the Devils office (and be Accusatores Fratrum) for light and vain words spoken onely in passion or ignorantly: or else they fall into the jaws of this all-devouring Court, from whence, no more then from hell, there is no redemption) for *Misprision* of Treason: the Penalty wherof is loss of liberty and lands for life, and of goods for ever, Who

Who can imagine lesse hereby, but that our Statists intend to raise a yearly revenue by this Court, by Forfeitures and Confiscations: and so erect an Office of Master of the States Forfeitures: like Empsons and Dudleys in Hen. VII. time aforesaid. And so continue this Court, to weede out the Ancient Inhabitants Canaanites and Amalekites. The said Additional Act, 27. Aug. 1650. concludes, That the said High Court shall not Examine, Try or proceed against any person other then such as shall be first by name appointed by the Parliament or Council of State. It should seem the Parliament and Council of State supply the want of a Grand Inquest; and their Appointment is instead of a Bill of Endictment found and presented. As assuredly as the High Inquisition was erected in Spain by Ferdinand and Isabella to extirpate the Mahometan Moors: And the said Council of Blood in the Low Countreys, by the Duke D'Alva to weed out the Lutherans, Calvinists and Anabaptists. So is this High Court set up in England, to root out the Royallists, Presbyterians and Levellers; and generally all that will not wholly concur with our Independents in Practice and Opinions. As will manifestly appear when their work is done in Scotland, which will soon be effected: the more zealous Scots being now as ready to sell their Kingdome; as they were formerly to sell their King.

I. Conclude therefore upon the Reasons aforesaid; That because the Commissioners or Judges are not sworn to do Justice according to the Laws: and are parties pre-ingaged (as well as their Masters, and pay-Masters, that named them) ignorant men, and of vile and base professions, incapable of places of Judicature, Necessitous Persons, and some of them Scandalous, and the High Court it self hath neither Law, President, nor any just Authority for constituting thereof or the Judges therein. And all proceedings before them are directly Contrary to Magna Charta, the Statute 25. Edw. III. chap. 2. The Petition of Right and all other known and Established Laws, and the continual Practice of our Nations; and (in many points) contrary to the Law of God and the Dictates of Right Reason. That these Commissioners are Incompetent Judges; Their Court an Extrajudicial Conventicle, tending to disinherit, disfranchise

10. Decemb. 1650. A New Act passed, for establishing an High Court of Justice in Norfolk, Suffolk, Huntingdon, Cambridge, Lincoln, and the Isle of Ely, &c. And so by degrees this gangrene shall enlarge it self all the Kingdome over.

and enslave all the Freemen of the Nation; and all Proceedings before them are void, and coram non Judge. See Col. Andrews three Answers. The said High Court of Justice to be a meer bloody Theater of Murder and Oppression. It being against Common Reason, and all Laws divine and humane, That any man should be Judge in his own Cause. *Neminem posse in sua causa Judicem esse*, Is the Rule in Law. But this Parliament and Council of State know they cannot establish and confirm their usurped Tyranny, (The Kingdome of the Saints,) ease up the People with Taxes; and share publick Lands, Offices, and Money amongst themselves, enslave the Nation to their Lawless wills and pleasures, but by cutting off the most able and active men of all opposite parties by some such expedient as this Arbitrary Lawless High Court is. The old Legal way by Juries (being found by John Lilbourns Trial) to be neither sure enough nor speedy enough to do their work. A Butcher-Row of Judges being easier packed, than a Jury who may be challenged. So that it fareth with the People of England, as with a Traveller fallen into the hands of Thieves. First, they take away his Purse. And then, to secure themselves, they take away his life, So they Robbe him by Providence, And then Murder him by Necessity. And (to bring in their third insisting Principle) they may alleage; They did all this upon Honest intentions; to enrich the Saints, and rob the Egyptians. With these three Principles they Justifie all their Villanies. Which is an Invention so meerly their own, That the Devil must acknowledge, They have propagated his Kingdome of Sinne and Death more by their impudent Justifications, then by their Turbulent Actions.

An Additional Postscript.

SINCE the Conclusion of the Premises, hath hapned, the Trial of that worthy Knight Sir John Stovell, of the County of Somerset: Who having bin often before this Court, hath so well defended himself, and wiped off all Objections, and made such good use of the Articles of the Rendition of Excester, that

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in the Opinion of all men, and in despite of their ensnaring Acts for New Treasons, he cannot be adjudged guilty of any Treason, Old or New, which was the Summe and Complement of the Charge against him. Wherefore the Court put off this Trial for a longer time, to hunt for New Crimes and Witnesses against him. At last came into the Court as a witness *John Ashe*, notwithstanding he is a Party many ways engaged against him. 1. *Ashe* is a Parliament-man, in which capacity *Sir John Stowel* bore Arms for the King against him. 2. *Ashe* as a Parliament-man is one of the constitutors of this murderous Court and the Judges thereof, and therefore their Creatures (who expect rewards from them) bear a more awfull respect to his testimony, then a witness ought to have from Judges. 3. It is publicly known that *Ashe* hath begged of the House a great summe of money out of the Composition for, or Confiscation of *Sir Johns* Estate. And 4ly. It is known to many, That during *Sir Johns* many years Imprisonment, *Ashe* often laboured with *Sir John* to sell unto him for 4000*l.* a Parcel of Land which cost *Sir John* above 10000*l.* promising him to passe his Composition at an easie rate, to procure his enlargement from Prison, and send him home in peace and quiet if he granted his desire. But although with all their malicious diligence, they cannot find him guilty of High Treason, yet their Articles of Impeachment Charge him in general Terms with Treason, Murder, Felony, and other High Crimes and Misdemeanors; and amasse together such a Sozites and an Accumulation of offences, as if one fail another shall hit right to make him punishable in one kind or other: such an hailshot charge cannot wholly misse; either they will have life, estate, or both: Contrary to the nature of all Endictments and Criminal Charges whatsoever; which ought to be particular, clear and certain (*Lamb. pag. 487.*) that the accused may know for what Crime he puts himself upon issue; But this Court (as High as it is) nor being Constituted a Court of Record; the Prisoner, and those that are concerned in him, can have no Record to resort to either. 1. To demand a Writ of Error, in Case of Erroneous Judgment. 2. To ground a plea of *Anterfois Acquire*, in case of New Question for the same fact. 3ly. Or to demand an enlargement upon Acquital.

Or 4th. To demand a writ of conspiracy, against such as have combined to betray the life of an innocent man. Whereby it follows, That this prodigious Court hath power only to Condemn and Execute ; not to Acquit and give Enlargement ; Contrary to the Nature of all Courts of Judicature, and of Justice it self : it is therefore a meer *Slaughter-house* to Commit Free-State Murders in, without, nay against Law and Justice : and not a Court of Judicature ; to condemne the *Novent*, and absolve the *Innocent*. And the Judges of this Court run Parallel with their Father the Devill ; who is ever the Minister of Gods wrath and fury, never of his Mercy.

The

The humble Answer of Col. *Eusebius Andrews*
Esquire, to the Proceedings against him be-
fore the Honourable, The high Court of
Justice 1650.

THe said Respondent (with favour of this Honourable Court)
reserving and praying to be allowed the benefit and liberty
of making farther Answer, if it shall be adjudged necessary, of-
fereth to this Honourable Court,

That by the Stat. or Charter (titled *Magna Charta*, which is
the Fundamental Law, and ought to be the Standard of the
Laws of *England*, Confirmed above 30. times, and yet unrepeal-
ed, it is in the 29. Chapter thereof granted and enacted,

1. *That no Freeman shall be taken or imprisoned, or be disseised
of his Freehold or Liberties, or Free-Customs; or be out-law-
ed or exiled, or any other ways destroyed, Nor we shall not put
upon him, but by a lawful Judgement of his Peers, or by the
Law of the Land.*

2. *We shall sell to no man, nor defer to any man Justice or Right.*

By the Stat. 42. Ed. III. chap. III. The Great Charter is
commanded to be kept in all points: and it is enacted.

*That if any Stat. be made to the contrary, That shall be holden
for none.*

By the Act 26. March 1650. entituled, An Act for establish-
ing an high Court of Justice, Power is given to this Court; To
Try, Condemn and cause execution of death to be done, upon the
Freemen of *England*, according as the Major number of any 12.
of the Members thereof shall judge to appertain to Justice.

And thereupon the Respondent doth humbly inferre, and
affirm that the Tenor of the said Act is diametrically opposite to,
and inconsistent with the said Great Charter, And is therefore
by the said recited Stat. 42. Ed. III. to be holden for none.

Secondly, That it can with no more Reason, Equity or Justice,
hold the reputation or value of a Law, (if the said Stat. had
not bin) then if (contrary to the second clause of the 29. chap.

of

of *Magna Charta*) it had bin also enacted, *That Justice and Right shall be deferred to all Freemen, and sold to all that will buy it.*

By the Petition of right, 3. *Car.* upon premising, That contrary to the Great Charter, Trials and Execution had bin had and done againt the Subjects, by Commissions-Martial, &c. it was thereby prayed, and by Commission enacted, That

1. *No Commissions of the like nature might be thenceforth issued, &c.*

2. *To prevent lest any of the Subjects should be put to death, contrary to the Laws and Franchises of the Land.*

The respondent hereupon humbly observeth, and affirmeth, *That this Court is (though under a different stile) in nature, and in the Proceedings thereby directed, the same with a Commission-Martial.* The Freemen thereby being to be tried for life, and adjudged by the Opinion of the Major-Number of the Commissioners sitting, as in Courts of Commissioners-Martial was practised, and was agreeable to their constitution: *And consequently against the Petition of Right:* in which he, and all the Freemen of England (if it be granted there be any such) hath and have Right and Interest, and he humbly claimes his right accordingly.

By the Declarations of this Parliament, Dec. and Jan. 17. 1641. The benefit of the Laws, and the ordinary course of Justice are the Subjects Birthright.

By the Declaration, 12. July 6. 1. Octob. 1642. The Prosecution of the Laws, and due administration of Justice, are owned to be the justifying cause of the War, and the end of the Parliaments Affaires managed by their Swords and Counsels, and Gods curse is by them imprecated, in case they should ever decline those ends.

By the Declaration 17. Aprill 1646. Promise was made not to interrupt the course of Justice, in the ordinary Courts.

By the Ordinance or Votes of Non addresser, Jan. 1648. It is assured, *That, though they lay aside the King; yet they will govern by the Laws, and not interrupt the course of Justice, in the ordinary Courts thereof.**

And therefore this Respondent humbly averreth and affirmeth, *That the Constitution of this Court, is a breach of the publick Faith of the Parliament exhibited and pledged*

* They forget the 1. Declaration 9 Feb. 17 March 1648.

Part III. *The History of Independency.*

in those Declarations and Votes to the Freemen of England.
And upon the whole matter, the Respondent (saying as aforesaid) doth affirm for Law and claimeth as is right. *That,*

1. *That this Court in defect of the validity of the said Act, by which it is constituted, hath no power to proceed against him, or to press him to a further Answer,*
2. *That by vertue of Magna Charta, The Petition of right, and the before cited Declarations, he ought not to be proceeded against in this Court, but by an ordinary Court of Justice, and to be tried by his Peers.*

And humbly prayeth: That this his present Answer and Salvo may be accepted and registred.

Ensebius Andrewes.

The Second Answer of Col. *Ensebius Andrewes,* To the Honourable, The High Court of Justice. 1650.

THe said Respondent (with the Favour of this Honourable Court) reserving and praying to be allowed the Benefit, and liberty of making further Answer, if it shall be Necessary. In all humbleness for the present Answer, offereth to this Honourable Court,

That by the Letters and genuine sense of the Act entituled An Act for establishing an high Court of Justice. *The said Court is not qualified to try a Freeman of England (such as the Respondent averreth himself to be) for life in case of Treason.*

For that: 1. *The said Court is not constituted a Court of Record; neither hath Commission returnable into a Court of Record.*

So that: 1. *The State cannot upon the Record (and but upon Record cannot at all) have that account of their Freemen, which Kings were wont to have of their Subjects, and States exact elsewhere at the hands of their Ministers of Justice.*

2. *The Freemen, and those who are or may be concerned in him,*
can

can have no Record to resort to, by which to preserve the Rights due to him and them respectively. viz.

1. *A writ of Error* in case of erroneous judgment.
2. *A plea of Auterfois acquit*, in case of new question for the same fact.
3. *An Enlargement upon Acquittall*.
4. *A writ of Conspiracy*, not to be brought untill Acquittall, against those who have practised to betray the life of the Respondent.

1. *The Writ of Error is due by Presidents.*

Paschæ 39. Ed. III. John of Gaunts Case. Rot. Parliament.

4. Ed. III. Num. 13. Count de Arundells Case. Rot. Parliament 49. Ed. III. Num. 23. Sr. John of Lees Case.

2. *Auterfois acquit* appears by
Wetherell and Darleis Case. 4. Rep. 43. *Eliz. Vaux* his Case.
 4. Rep. 33. *Eliz.*

3. *The Enlargement* appears by
Stat. 14. Hen. IV. chap. 1. Diers Reports fol. 121. The year
 book of Ed. IV. 10. fol. 19.

4. *The writ of Conspiracy*, by
The Poulkers Case. 9. Rep. fol. 55.

This Court is to determine at a day, without account of their proceedings, and have power to try, judge, and cause Execution: but not to acquit or give Enlargement. So that the nocent are thereby punishable; the injured and betrayed are vindicable. Which are defects incompatible with a Court of Justice, and inconsistent with Justice it self; and the honor of a Christian Nation and Common-wealth.

2. *The Members of this Court, are by the said Act directed to be sworn.*

1. *Non in conspectu populi; For the Freemans satisfaction.*
2. *Not in words of Indifferency and obliging in equality.*
3. *But in words of manifest partiality, viz.*

You shall swear, That you shall well and truly, according to the best of your skill and knowledge, execute the severall powers given you by this Act.

1. *If the Court be Triers and Judges too, it is humbly offered by the respondent, that it is but reasonable, that they should be sworn*

sworn as triers, in the sight of the Freeman who shall be upon his Triall.

2. And, that as Justices of Oyer and Terminer (They being authorized to hear and determine by the words of the Act.) They should take an oath, such as is usual and equal, set down Ed. III. Viz. You shall swear, that well and lawfull you shall serve our Lord the King, and his People in the Office of Justice, &c. And that you deny to no man Common Right.
3. Or that this Court (taking Notice of such high matters as Treason, upon the guilt whereof the Freemans life depends) should take an Oath (at least) as equall as a Justice of the Peace. *Daltons Just. of Peace, fol. 13.* the words are, *I A. B. do swear that I will do equall Right, &c. according to my best wit, cunning and power, after the Laws and Customes of the Land, and the Statutes thereof made, &c.*
4. If the Court will be Judges and Triers too, (for they have power given them to conclude the Freeman, by the opinion of the major number of twelve, holding some resemblance (but with a signal difference) with the verdict of a Jury) it were but reasonable that they should take an Oath correspondent to that usually administred to Jury-men. The words are, *You shall well and truly try, and true deliverance make between the Keepers of the Liberties of England, and the Prisoner at the Bar, according to your evidence.* So help you God, &c.
5. When this Court (as it is now constituted) hath condemned a Freeman, by applying their skill and knowledge to the power given them, whether justly or not: the Oath injoynd them by the Act 26. March, 1650. is not broken, literally; as to be exactable by man, though God will have a better account.

And therefore upon the whole matter premised: The Respondent (saying as before) averreth for Law and Reason: This Court by the words of the Act constituting it; is not qualified, (in respect of the objected defects) to passe upon him for life in case of Treason, And prays this his 2. Answer may be received, with the *Salvo's*, and registred.

Eusebii Androm.
The

The third Answer of Col. Eusebius Andrews
Esquire, to the Honorable, The High Court
of Justice. 1650.

THe said Respondent (with favour of this Honourable Court) reserving and praying to be allowed the benefit and liberty of making further Answer, if it shall be necessary, in all humbleness for present Answer offereth to this Honourable Court,

1. That it is his Right (if he admit this Court to be duly and legally established, and constituted as to their being a Court) to be tried by his Peers; men of his own condition and Neighbourhood.

2. That it is within the power of this Court, by the Letter of the Atk, 26. March 1650. Or (at least) not repugnant to the Atk, to try him by such his Peers, &c.

1. That it is his Right to be tried only so: appears by
Magna Charta, chap. 29. 25. Ed. 1. chap. 1. and 2.
 25. Ed. 3. chap. 9. 25. Ed. 3. chap. 2. and 4.
 28. Ed. 3. chap. 4. 37. Ed. 3. chap. 18.
 42. Ed. 3. chap. 3.

By all which this Right is maintainable; And the Proceedings contrary therunto will be held for none, and to be redressed as void and erroneous.

So that if the Laws and Courts were not obstructed in the cases of some sort of Freemen of *England*, the whole Proceedings contrary to these Laws without a Jury of his Peers, were avoidable and reversible by Writ of Errour, as appears by the Presidents vouched in the Respondents second Answer.

3. That it is in the Courts power, To try the Freeman, and consequently the Respondent, by a Jury of his Equalls, The Court is humbly desired to consider the words of qualification.

1. The Court is Authorized; To hear and determine: and so (if at all Commissioners) then Commissioners of Oyer and Terminer, and such Commissioners, in their naturall constitution and practisall execution, do proceed against Freemen according to

Lamp.

Law by a Jury of their Peers, and not otherwise.

2. Authorised to proceed to Trial, condemnation and execution: But not restrained to the manner limitative: As, to Trial by the Opinion of the Court, as Triers, Not exclusive. As, to Trial per pares. But is left in the Manner, as in the Judgment it self. To the Opinion of the major part of 12. and if they shall think fit to try by a Jury, it will be no offence against the Act, there being no Prohibition to the contrary.

And though this Respondent insisteth upon his said Right, consulting with the Courts said power, and the more to induce the Court to grant him his said Right; He humbly representeth the wrong done to himself, and in him to the Free-manzey of England in the following particulars, against their just Rights depending upon such Trials to be allowed or denied.

1. Challenges to his Triers peremptory, or with cause of Challenge.

2. Seeing, hearing, and counter-questioning the witnesses for clearing of the Evidence: in matter of Fact and Circumstance.

3. The being convicted or acquitted by a full and fully consented verdict.

To all which benefits as his undoubted Right, and the Right of all the Freemen of England, the Respondent maketh claim by these Reasons, Laws and Presidents following.

1. The benefit of Challenges by the learning of Stamford in his Pleas of the Crown, Title challenge fol. 150. To challenge without Reason shewed; and with Reason shewn, without Number adjudged 32: Hen. VI. in Poinings case, abridged by Fitzherb. Tit. Challenge, fol. 26. allowed in Hillary 1. Jac. Sir Walter Rawleigh and Brooks.

2. To the hearing and questioning the value and weight of the witnesses. The Laws are plain in Stamfords pleas of the Crown fol. 163, 164. Stat. 1. and 2. of Phil. and Mary, Chap. 10, 11. 1. Ed. VI. chap. 12. Cooks 3. Instit. pag. 12. upon the words to the St. 25. Ed. III. chap. 2. (Provablement attain) Because the punishment was heavy, the proof must be punctual, and not upon presumptions, or Inferences, or Streins of wit, nor upon Arguments simili, or Minori ad Majus, &c. But upon good and clear proofs, made good also by the St. 1. Ed. c. 6. 19. Ed. c. 1.

3. A verdict by Jury passeth from all, or not at all, in this way of proceeding by the Court immediately: it passeth by way of concurrence (or voting) the great fault found with the Star-Chamber; and all Commissionary Courts, proceeding without presentment or Endictment.

4. A verdict passeth from a Jury before discharged, upon their Affairs of business, or supplies of Nature; to prevent corruption by money or power. In this way of Trial a man may be heard to day, and a Sentence given at leisure, when the power and will of those by whom the Freeman is prosecuted, be first known. And from such a proceeding this Respondent can hope little equality; he being (to his knowledge) forejudged already by them.

And therefore (if at all this Honorable Court think fit to proceed to a Trial of this Respondent) he claims the benefit of Trial *per pares*: by Evidence *viva voce*. And rests on the Opinion of the Court; saving (as formerly) Liberty of farther Answer, if over-ruled.

And prays that this his Answer and Salvos may be accepted and registred.

Eusebii Andrews.

FINIS.

III.

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